

# **THE THREE PRINCIPLES OF CLASSICAL LIBERALISM (FROM JOHN LOCKE TO JOHN TOMASI):**

A Consequentialist Defence of the Limited Welfare State

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Tiivistelmä – Referat – Abstract  I provide a defence of the classical liberal tradition (from Locke and Smith to Hayek and Tomasi) as a blueprint for a “bleeding-heart libertarian” framework of society. Such a society defends three principles: 1) Freedom from private coercion (Private Property), 2) Freedom from public coercion (Limited Government); and 3) Within these limits, the provision of a limited range of public goods and public welfare (Limited Welfare State). I show that principles can be abstracted from a reading of the classical liberal tradition. Then, through an extensive analysis of Locke, I show the importance, and consequentialist justifications, of the Three Principles for any liberal welfare state. Through a critique of Nozick, I show the inadequacy of the hardcore libertarian interpretation. Then, I show that John Tomasi, Adam Smith and Friedrich Hayek have all defended versions of limited welfare states. On this basis, I propose that the Basic Income Guarantee (BIG) is a good example, supported by Hayek, Buchanan and Friedman, of a welfare principle that is compatible with bleeding-heart libertarianism. I believe we can justify, on the basis of a consequentialist theory, that the limited welfare state, which combines welfare with liberty, and the free market with a social safety net, has highly beneficial effects on the society. It thus suggests itself as a viable competitor to rights-based libertarianism and social liberalism.			
Avainsanat – Nyckelord – Keywords  classical liberalism, Locke, Nozick, Hayek, Smith, Consequentialism			



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Työn laji – Arbetets art – Level Pro gradu -työ		Aika – Datum – Month and year Toukokuu 2015	Sivumäärä – Sidoantal – Number of pages 95
Tiivistelmä – Referat – Abstract  Esitän puolustuksen klassisen liberalismiin pohjalle rakennetusta hyvinvointilibertaristisesta (”bleeding heart libertarian”) teoriasta, jonka vaikutteina ovat John Locke, Adam Smith, Friedrich Hayek ja John Tomasi. Se rakentuu klassisen liberalismiin kolmen periaatteen varaan: (1) Vapaus yksityisestä pakottamisesta (yksityinen omistusoikeus); (2) Vapaus julkisesta pakottamisesta (rajattu valtiovalta); Ja (3) näiden rajojen puitteissa, tiettyjen julkishyödykkeiden ja hyvinvointipalveluiden tuottaminen (rajattu hyvinvointivaltio). Osoitan, että nämä periaatteet on mahdollista abstrahoida klassisen liberalismiin perinteestä. Locken analyysin kautta osoitan näiden kolme periaatteen tärkeyden mille tahansa hyvinvointivaltiolle. Nozickin kritiikin kautta osoitan hardcore-libertarismiin tulkinnan riittämättömyyden. Tämän jälkeen osoitan, että John Tomasin, Adam Smithin ja Friedrich Hayekin tuotannosta voimme löytää eväät rajoitetun hyvinvointivaltion rakentamiselle. Tätä teoriaa tulkitsemalla osoitan, Hayekin, Buchananin ja Friedmanin pohjalta, että kaikille kansalaisille taattu perustulo on hyvinvointilibertarismiin (”bleeding heart” libertarismiin) sopiva hyvinvointivaltion funktio. Vaikka klassisen liberalismiin kolmen periaatteen seurauselliset lähtökohdat ovat kiistanalaiset, väitän, että tällaisessa rajatussa hyvinvointivaltiossa, joka yhdistää hyvinvoinnin vapauteen, ja vapauden hyvinvointiin, yhdistyy libertarismiin parhaat puolen sosiaalisen hyvinvointiajattelun parhaimpiin puoliin.			
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# **List of Abbreviations**

CoL: The Constitution of Liberty (F.Hayek)

LLL: Law, Legislation and Liberty (F.Hayek)

RtS: The Road to Serfdom (F.Hayek)

TTG: The Two Treatises of Government (J.Locke)

WoN: An Inquiry Into the Nature and Causes of the Wealth of Nations (A.Smith)

## **0. Research Plan: A Synopsis**

I have two research goals in this paper:

- 1) Provide a new theory of classical liberalism: “The Three Principles”.
- 2) Apply that theory to the debate about the justifications of the welfare state.

**The first goal** requires that the classical liberal tradition provides such a framework. My hypothesis is that this tradition can be encapsulated in Three Principles, the first two of which – property rights and limited government – form the *libertarian core* of the society. The third principle – the principle of welfare - is built on top of this libertarian core, and complements it, by creating the boundary conditions within which the spontaneous order of the market may operate. These principles can be justified on rights-grounds, or on consequentialist grounds. I take a consequentialist approach.

**My second goal** proceeds from the assumption that we need to rethink some of the current philosophical discussion around the issues of the welfare state. I believe that today's defenders of the welfare state often forget about the importance of property rights and individual freedoms in the prosperity of the society. I also believe that today's libertarians – who are the most principled defenders of property rights and individual freedoms - often forget about the importance of public institutions, and of limited welfare redistribution, in improving the society. So, to what extent can we combine the concern for liberty with the concern for the poor? My hypothesis, based on Smith and Hayek, is that we can apply the Three Principles of Liberalism to provide the outlines of a classical liberal, or bleeding-heart libertarian, limited welfare state.

*Chapter 1:* In the **introduction**, I argue that there, indeed, *is* a classical liberal doctrine, which can be distinguished from libertarianism and social/welfare liberalism.

*Chapter 2:* I propose that the **classical liberal doctrine** can be abstracted from the tradition. It is supported by Locke, Hayek, Smith, Tomasi and many others. It consists of Three Principles: 1) Strong private property rights; 2) Limited government; and 3) Limited welfarism. It protects freedom from coercion through setting limits into law. I call this the “doctrine of the limits.” On top of the first two libertarian Principles, the

doctrine allows for a limited range of activities for the public good (Principle 3).

*Chapter 3: John Locke* provides a systematic defence of the first two principles of liberalism. I will show that the best reason for accepting private property rights and limited government is not the rights-based approach, which is very problematic, but rather the consequentialist argument that private ownership, free exchange and the limited government are useful *instruments* for the development and progress of the commercial society of free and equal people. This argument, which also appears in Smith and Hayek, suggests that the Three Principles are a necessary condition for universal opulence and the peaceful co-existence of free and equal citizens.

*Chapters 4:* The **libertarians** provide a coherent theory, where the consequentialist parts of Locke, and the utilitarian aims of the society, are brushed aside. The classical liberal doctrine of limits is turned into the libertarian doctrine of the minimal state. It has absolute property rights and little else. I will show that this doctrine is unsatisfactory, because a) it does not allow for Pareto-improvements that the government can make; and b) it does not guarantee citizens even a minimal social safety net of the sort that any decent society should have. Thus the libertarian rights-based reading of the doctrine is inferior to the consequentialist reading of them.

*Chapter 5:* The proposed solution is the **limited welfare state**. John Tomasi, Adam Smith and Friedrich Hayek provide good blueprints for a bleeding-heart libertarian interpretation of the Three Principles of liberalism. They accept the Lockean framework of strong property rights and limited government; but they also accept the provision of a limited range of public goods on consequentialist grounds.

*Chapter 6:* Next I propose the so-called **Basic Income Guarantee** as an example of a welfare mechanism that *can* be, and overwhelmingly *has* been, defended by such bleeding-heart and classical liberals, as a way to apply the Three Principles into a legal and political framework. It provides an alternative to non-liberal welfare states.

*Chapter 7-8: Concluding,* I gather the pieces together, and explore some of the open problems and suggestions for further research. The consequentialist reading of classical liberalism (from Locke to Smith to Hayek to Tomasi) justifies a strong notion of



property rights, because *thick property rights* under a *limited government* are extremely useful, perhaps vital, for the peace, prosperity and progress of the society. But there are also consequentialist reasons to provide a limited range of state interventions – namely, enough to provide a limited range of public goods and guaranteed basic welfare, but not enough to damage the market economy.

## **1. Introduction: What is Classical Liberalism?**

“The subject of this Essay is [...] Civil, or Social Liberty: the nature and limits of the power which can be legitimately exercised by society over the individual.” (Mill: 1)

This thesis offers an interpretation of the classical liberal tradition. Liberalism is a philosophical doctrine that emphasizes freedom. Freedom is seen as a fundamental value to govern social and political life. I will mainly defend its *usefulness*.

There are many definitions of freedom, and many different varieties of liberalism. I will mostly leave aside the *social liberal* tradition of John Rawls and others, although my analysis will undoubtedly provide interesting parallels to that tradition. I am concerned with the *classical liberal* tradition of John Locke, Adam Smith, Friedrich Hayek, James Buchanan, Milton Friedman, John Tomasi, etc. I will compare and contrast it with the *libertarian* tradition of Herbert Spencer, Jan Narveson, Robert Nozick, etc.

I will defend a reading of classical liberalism that is compatible with a) strong libertarian principles – thick property rights, economic freedom and limited government – and with b) a limited range of welfare and other public services. I believe my interpretation is a fair abstraction from the philosophical tradition of Locke, Smith, Hayek, et al., although it is obviously not the *only* way to interpret that tradition.

First, I need to proof that there is such a thing as a "classical liberal paradigm". Then I need to define what it is, by summarizing its basic tenets in a systematic manner.

I have no doubt that Rawlsian social liberals and Nozickean libertarians will have a

different interpretation of what constitutes the essence of the classical tradition. This is perfectly reasonable. Having different perspectives, and different interpretations, on what constitutes the essential features of a tradition helps to keep the tradition alive. I agree with Alasdair MacIntyre's general advice (1980: 62):

”What constitutes a tradition is a conflict of interpretations of that tradition, a conflict which itself has a history susceptible of rival interpretations. If I am a Jew, I have to recognize that the tradition of Judaism is partly constituted by a continuous argument over what it means to be a Jew.”

I have to recognize that the tradition of liberalism is partly constituted by a continuous argument over what it means to be a liberal. There is no ”neutral” definition of liberalism. All definitions of liberalism are interpretations. So let me propose one interpretation, which is my contribution to that continuous argument.

I will start with Hayek's definition of freedom as freedom from coercion:

”Coercion occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose.” (CoL: 198) "Free society has met this problem by conferring the monopoly of coercion on the state and by attempting to limit this power of the state to instances where it is required to prevent coercion by private persons. This is possible only by the state's protecting known private spheres of the individuals against interference by others and delimiting these private spheres" (CoL: 71-72)

This means that freedom places *limits* on coercive actions. There is a wide range of coercive actions, but the most dangerous is the threat of physical aggression and violence. The two greatest sources of potential aggression are from 1) one's fellow citizens and 2) the state under which one lives. Freedom, in order to have a breathing space, requires limits on both these forms of coercion: private and state-sponsored.

Freedom is achieved by limiting one kinds of actions – coercive ones – in order to encourage other kinds of actions – non-coercive ones. The result is the increase of

voluntary exchanges within the parameters of the law. Within those limits, people are free to act without consideration of the resulting overall pattern. The lack of a clear pattern, in fact, is a *desirable consequence* of freedom (as long as we can assume that *most* people are better off *in the long-run*). As Hayek emphasizes, it is not because we know that liberty will benefit particular people for particular reasons, but precisely because we do *not* know the particular effects (but only that the effects are *generally* positive), that we must embrace its unforeseeable results: "Freedom granted only when it is known beforehand that its effects will be beneficial is not freedom. If we knew how freedom would be used, the case for it would largely disappear." (CoL: 83)

At the heart of the classical liberal paradigm is the limited government. The limited government opposes all "absolute, arbitrary, unlimited, and unlimitable Power". (Locke, TTG: I, §9) The liberal government must be its opposite: non-absolute, non-arbitrary and limited. As Hayek puts it, "[t]he coercion which the government must still use [...] is reduced to a minimum and made as innocuous as possible by restraining it through known general rules." (CoL: 72) The limited government is only concerned with general, abstract notions of justice, and *not* with concrete notions of what particular people ought to do. People are seen as individuals with their own life plans.

Such a *limited* state is not the same as the so-called *minimal state*. This is the difference between classical liberalism and hardcore libertarianism. Minimal state restricts itself to the enforcement of property rights via the justice system, and protection against internal and external threats, and nothing else. (Cf. Nozick: 149) Classical liberalism, too, acknowledges that the minimal state functions are a *necessary*, and perhaps *the most important*, precondition for the liberal society. The protect people from coercion and thus enable freedom. This forms the "libertarian core" of classical liberalism. But the minimal state is only a necessary, not a sufficient, condition, for a good society. Libertarianism is not enough. We also need to have a state capable of providing a limited range of public goods and some form of a social safety net.

As will become apparent, from Locke and Smith to Hayek and Tomasi, the libertarian core of the classical liberal paradigm has been seen to need a few corrections. These include, but are not limited to: democratic decision-making, the promotion of basic

welfare, the provision of public goods and the correction of market failures (such as externalities and neighbourhood effects). In my essay, I will argue that such a positive role of the government constitutes a necessary part of the classical liberal paradigm. We need to go beyond the minimal state to achieve the liberal utopia that Nozick (297ff.) so beautifully dreams of. But, at the same token, we must keep our ambitions modest.

I want to argue that, from these grounds, we can reconstruct a comprehensive doctrine, which incorporates only a few basic tenets. I believe that there is a central theme that unifies many of the greatest thinkers in the tradition: the construction of a society where freedom from coercion, both against private and public entities, is guaranteed under the rule of law, and where any government actions beyond that, even while acceptable for the sake of the public good, must be carefully bounded by liberal principles. These principles are universal, despite the many dissimilarities between individual thinkers.

These principles can be combined to form a coherent plan for a limited but robust welfare state. The end result can be called "classical liberal", "bleeding-heart libertarian" or - why not - "welfare libertarian".

By rediscovering the classical liberal tradition, it is possible to defend a regime of limited government, which tolerates a high degree of diversity, and has no comprehensive plan for society, but which also leaves room, for reasons of overall utility, for building robust – or even antifragile<sup>1</sup> - institutions that promote the public good. The end result is a *(more-than-minimal-but-)limited welfare state*.

To sum up, I define classical liberalism as the defence of Three Principles:

- 1) Freedom from private coercion (PRIVATE PROPERTY)
- 2) Freedom from public coercion (LIMITED GOVERNMENT)
- 3) State provision of limited public goods (LIMITED WELFARE STATE)

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1 Nassim Taleb (2012) defines antifragility as the capacity of a system to benefit from disorder, as opposed to a fragile system that benefits from order (and stagnation). He claims that an antifragile system is different from a merely robust system, because a robust system merely *survives* disorder, but an antifragile system actually becomes *stronger*. A market economy under a suitable system of the rule of law is an example of an antifragile system, because it benefits from sudden shocks, changes and transformations that allow it to thrive by a process of continuous self-renewal. See also: Schumpeter's (1941) "creative destruction" and Hayek's (1960) "spontaneous order."

Classical liberalism, in addition to being a doctrine of maximizing free and voluntary human cooperation, is a doctrine of legal limits to coercive action. These limits are incorporated into the concepts of the private sphere and the limited government. The limits enable freedom, and freedom is a necessary condition for a good society.

I will, henceforth, proceed to defend the following assumptions:

1. That there is such a thing as a coherent set of classical liberal principles.
2. That these principles can be roughly summed up in the following three:
  - a) Freedom from private coercion: PRIVATE PROPERTY
  - b) Freedom from public coercion: LIMITED GOVERNMENT
  - c) State provision of limited public goods: THE LIMITED WELFARE STATE
3. That the libertarian interpretation *is not* sufficient for a good society;
4. That the classical liberal interpretation *is* sufficient for a good society;
5. That such a theory provides a blueprint for a limited welfare state.

The purpose is to defend a substantially libertarian but non-hardcore reading of classical liberalism from a Lockean-Smithean-Hayekian perspective. It produces new perspectives on the vital relationship that liberty has to the welfare state.

## **2. The Three Principles of Liberalism**

Let me try to define this doctrine through its formal characteristics.

### **2.1 The Doctrine of Limits: Freedom vs. Coercion**

“The aim, therefore, of patriots was to set limits to the power which the ruler should be suffered to exercise over the community; and *this limitation was what they meant by liberty*” (Mill: 4, my emphasis).

In this chapter we shall explore the first two principles of liberalism. The third one

comes later (chapter 5), on top of the first two.

The first two principles of classical liberalism are interrelated: they are both *instruments against coercion*. Coercion is the thing that needs to be minimized in order to maximize freedom. Coercion is the opposite of freedom. This enables us to understand classical liberalism as a doctrine whereby liberty is secured through submitting human action, in private and public capacity, to certain limits.

I will intersperse the analysis with quotations from many classical liberals. The danger of such an approach is that we lose sight of the differences between various thinkers. But the point is to prove that the doctrine is not the invention of any *particular* thinker, but rather a shared commitment, shared by dozens of different thinkers with different outlooks.

Is there such a shared doctrine? Yes. Smith called it “the system of natural liberty” (WoN: 533). Locke called it “the law of nature” (TTG: §22<sup>2</sup>). Hayek called it the “rules of just conduct” (LLL: 246). They all point to pretty much the same *core* thing. (By the end of this thesis, I hope to have convinced even the skeptical reader of that.)

The existence of such a doctrine is acknowledged, although not formalized in this way, in, e.g. Mises's *Liberalism* (1929), Hayek's *Constitution of Liberty* (1960) & Tomasi's *Free Market Fairness* (2012). My investigation will thus follow in their footsteps.

Some people disagree that such a doctrine can be found. They may wish to note the “difficulty of arriving at any quite definite and widely agreed meaning of liberalism.” (Letwin: 80) I have tried to circumvent this by focusing on *classical* liberalism. Saastamoinen even goes as far as to argue: “The term 'liberalism' does not denote a unified ideology in the Western philosophical tradition.” (8)

*But*, Saastamoinen himself helps to outline elements of the doctrine (22-26). He sees that the basic principles of liberalism include: 1) natural equality between people; 2) individual liberty; 3) opposition to hierarchical privileges; and 4) opposition to all

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2 I use the standard annotation, where reference is made to the section rather than the page number. All sections refer to the *Second* Treatise, unless otherwise specified, so I have omitted Roman numerals.

further-reaching (socialist) demands for more “substantial” freedom and equality.

The first two points could be generalized to mean that liberalism wishes to grant people *equal liberty*; and the last two that liberalism wishes to *limit government*. So, contrary to Saastamoinen's claims, his analysis actually helps support my argument! So, classical liberalism, despite its wide range of differences, encapsulates a doctrine of limits against coercion, where *equal liberty* is guaranteed under a *limited government*.

I shall, for sure, defend a *particular* version of these principles in later chapters – the consequentialism found in Locke, Smith and Hayek – so that here we can simply focus on the formal, logical aspects of the doctrine. Deeper justifications will come later.

So, the guiding hypothesis is that classical liberalism is a doctrine of limits. It limits human action by focusing on minimizing private and public coercion:

- 1) Limits on private (individual) action [PRINCIPLE 1]
- 2) Limits on public (government) action. [PRINCIPLE 2]

The background assumption, here, is that people are equally entitled to liberty (= the *equal liberty* hypothesis). People are thus equally entitled to enjoy the protection of these limits, which are used to draw the boundaries of private property, public space, coercion and freedom. Equal liberty cannot flourish without such limits.

Such a framework of freedom is equivalent to what Isaiah Berlin called “negative freedom”. (Berlin, 1969) For classical liberalism, negative freedom (“freedom from”) was always much more important than positive freedom (“freedom to”), and this interpretation of freedom is the one I also wish to defend in my thesis. Negative freedom “is involved in the answer to the question 'What is the area within which the subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?’” (Berlin: 2) It is thus equivalent to setting up appropriate limits, negative borders, against coercive actions by intruders.

Aside from a few anarchists (Cf. Rothbard 1973), the majority of classical liberals do *not* think that the correct way to limit government and human action is to have *no*

government and *no* laws. Laws, as limits to coercive action, are necessary to maintain individual freedom. The most common answer is *not* absolute individual liberty - i.e. absolute anarchy - but a regime of substantial individual freedom under the rule of law.

The government is seen as an agent among others, and its reach cannot be considered justified unless it is constrained within certain pre-defined rules, which mark out its legitimate form: “[T]he essence of this emerging 'liberal' program lay in the idea that the purpose of the state is to protect the freedom of citizens equally. The proper way for the state is to accomplish this goal is to limit the range of its own activities. [...] The liberal conception of justice requires that the state restrain itself.” (Tomasi: 7)

There cannot be *absolute* freedom for individuals, either. My freedom ends where your property begins, and the best way to protect liberty is to institute a limited government (a collective coercion instrument), with which to limit and 'out-crowd' private coercion. Private coercion cannot be eliminated without the threat of public coercion.

**In order to free people, we must restrain them.** Since state power is seen as fundamentally coercive, it is a common liberal prejudice that the “[h]uman society cannot do without the apparatus of the state, but the whole of mankind's progress has had to be achieved against the resistance and opposition of the state and its power of coercion.” (Mises: 58) And since the state is seen as necessary, this leads to the crucial question: “How can Leviathan be chained?” (Buchanan 1975: 13)

The answer is that Leviathan is “chained” and limited by 1) protecting *individual property rights* and 2) denying the state the power of *absolute sovereignty*.

The government can be an instrument of freedom or an instrument of coercion – and often it is a bit of both. This follows from the fact that all government power is coercive, but some coercion actually *benefits* freedom, since e.g. the police and the courts are necessary in order to make sure that individual freedoms are respected.

There exists a relationship of mutual support between the private sphere and the public sphere: “Individuals hold rights or claims vis-à-vis the enforcing agent as much as against other persons. The government is, itself, held strictly within the law”. (Buchanan 1975: 83)



Liberal rights are mechanisms whereby coercion is limited to minimum. The allure of anarchism arises from the realization that *all* government action is suspect, because it depends on coercion (as embodied in the Hobbesian notion of Leviathan, the potent symbol of the monopoly of violence). Unlimited anarchy, however, fails to respect borders, too. Free private action will lead to conflicts as long as the society lacks what Locke called a “common judge” (TTG: §19) that can resolve disputes.

The common judge is the coercion-wielding, people-backed government with the power to settle disputes and thus minimize coercion between individuals. We need rules on how to minimize coercion, but we also need to grant one institution – the government – the highest (but limited) authority to exercise coercion for the benefit of everybody. The limits are optimized and set on such a level, “between anarchy and Leviathan” (Buchanan, 1975), as to minimize *overall* coercion.

Thus the liberal “rights” and “claims” - which are made against fellow-citizens and against the government (which is itself defined as the collective action of free and equal citizens) – are claims against certain kinds of actions by people in their private and public roles (i.e. citizens and rulers). We shall later see (e.g. Chapter 3.1), that these *rights are best defended on consequentialist grounds*: as the best means to achieve certain results – namely, a society of free and equal, prosperous people, where the productivity of labour, land and capital is maximized, to socially beneficial results.

The majority of classical liberals (in the tradition of “negative freedom”) share a core belief in such a conception of limits to private and public action, which translates into strong property rights under a limited government. This is the *libertarian core* of liberalism. Such a system maximizes freedom through limiting coercion. And although the *general* and *long-term* outcomes of such a system are assumed to be positive, there is, in this minimal conception, very little concern for the *particular* and *short-term* outcomes of such a system. Thus, liberalism has a strong bias towards procedural, non-patterned justice, where “[t]he 'goodness' of an outcome is evaluated on procedural criteria” (Buchanan 1975: 164), and where “[p]atterns of distribution within the social world are not a reflection of anyone's intention or design, but emerge as the unplanned and ever-changing product of choices individuals make in pursuit of their goals and

ends.” (Tomasi: 10)

Rights-based liberals, like Locke<sup>3</sup> and Rothbard, argue that the limits set by liberalism are necessary since they derive from innate human rights – usually granted by God, Nature or Reason. Consequentialist liberals, like Smith or Hayek, argue that the goal of the limits set by liberalism is to enable a free and prosperous society. In both cases, the method is enforcing sufficient limits on action: not too much and not too little.

Debate within liberalism is largely debate about the precise contours of these limits. There are considerable differences in the way different thinkers approach these questions. Disputes about the precise nature of limits is largely debates about the meaning of freedom and coercion; and especially on disagreements on “the part I believe to be played by other human beings, directly or indirectly, with or without the intention of doing so, in frustrating my wishes. By being free in this sense I mean not being interfered with by others. The wider the area of non-interference the wider my freedom.” (Berlin: 3) Such disputes result in different views on what counts as coercion. For example, welfare-leaning liberals will argue that all sorts of 'voluntary' contracts (say between a poor worker and a rich corporation) may be coercive in the wider sense, while libertarian-leaning liberals will be more reluctant to say so. (Cf. Hayek, CoL: 198) I am operating under the latter, stricter, definition of coercion. You see, definitions of limits also require, well, definite limits, and the looser notion of coercion threatens to nullify the possibility of demarcating clear boundaries.

The purpose of my analysis is to show the usefulness and beneficence of these limits. Despite my respect for property rights, I fall in line with the consequentialist camp. I want to argue that even “natural” rights need consequentialist *justifications of their beneficial social effects*, of the sort that Locke, Smith and Hayek do, in fact, provide.

But the crucial thing to recognize, here, is the extent to which the paradigm is *shared* within the Lockean-Hayekian classical liberal tradition. Both rights-based and consequentialist liberals converge, more or less, on the idea of freedom from coercion being defined negatively as limits. Thus we can say that, indeed, there *does* exist a

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<sup>3</sup> Although, I aim to show that even the apparently rights-based approach of Lockeanism is actually, in important ways, best understood as a consequentialist theory about the usefulness of rules.

coherent doctrine of limits in classical liberalism.

The two principles are, to recap: 1) Freedom from private coercion (strong property rights); and 2) Freedom from public coercion (limits to government power).

Let us now take a look at how private property is necessary for negative freedom.

## 2.2 Property Rights: Freedom from Private Coercion

“[G]overnment has no other end but the preservation of property” (TTG: §94).

The philosophical understanding of the notion of property is often muddled by the seemingly simple nature of the concept. Property is, surely, what makes the difference between what is mine and what is yours. But what, exactly, does this mean?

Jean-Jacques Rousseau (1754) provides a powerful critique of private property in his essay *On the Origin of the Inequality of Mankind*<sup>4</sup>: “The first person who, having enclosed a plot of land, took it into his head to say this is mine and found people simple enough to believe him was the true founder of civil society. [...] "Do not listen to this imposter. You are lost if you forget that the fruits of the earth belong to all and the earth to no one!" (Part Two, opening words.)

The classical liberals obviously take a more positive approach. Property, for them, is an important institution - at least up to a point. They argue that property is beneficent and benevolent. In the following, I wish to bring about an understanding of *property (rights) as limits on human action*. Nozick calls them “side-constraints” (Nozick: 32) on human action. In later chapters, I shall quarrel with Nozick's demarcation of these limits, but his terminology is very useful. We need constraints to protect the *autonomy* of the individual (and her private sphere) from external transgressions. Property, in the classical liberal sense, is the creation of a protected private sphere surrounded by *limits* that cannot be crossed without ethical transgression. As Nozick put it in the opening words of his *Anarchy, State and Utopia* (1974): “Individuals have rights, and there are

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4 Online edition, no page numbers.

things no person or group may do to them (without violating their rights).” (ix)

Thus, you may not enter my house without my permission. Thus, you may not borrow my car without my permission. Thus, you may not violate my body. In this sense, property is the legal limit on human action: my claim against others, recognized by society. Property rights mark the *limits of permitted action* in a liberal society.

Locke considered property rights to consist of “life, liberty, and estate” (TTG: §87). Government ought to “to preserve [a citizen’s] property – that is, his life, liberty, and estate – against the injuries and attempts of other men”. (*ibid.*) Property is a safeguard of “my domain”, which consists of robust self- and property-ownership. One is (mostly) free to do whatever does not infringe upon the the like property of another, i.e. trespass the legally defined *limits* of another person's private sphere.

Communist critics (correctly) saw private property as a *limitation* on the actions of people. That it is. But they (incorrectly) concluded that a better society is possible *without* such limits. People like Rousseau wish to eliminate private property because they fail to see that “private property is not a privilege of the property owner, but a social institution for the good and benefit for all.” (Mises: 30) This consequentialist argument for a strong notion of property I shall defend in this essay.

This, of course, does not mean that property rights should be absolute. The specific nature of property rights is up for deliberation. James Buchanan (1975) writes: “Neither the specific distribution of rights among separate persons, nor the general characteristic of the rights structure itself is relevant directly to the issue of mutual agreement, certainty in definition, and enforcement.” (*ibid*: 21) It only matters that they be “well-defined and non-arbitrary” (*ibid*: 18). Although this can't be quite true, either: a well-defined and non-arbitrary form of communism might not be quite as beneficial.

A regime of *legally protected* property rights is a prerequisite for liberty: “the end of the law is, not to abolish or restrain, but to preserve and enlarge freedom. For [...] where there is no law there is no freedom” (TTG: §57). Without property rights, there would be no “general, abstract rules” (Hayek, CoL: 72) that are “well-defined and non-

arbitrary” (Buchanan: *ibid.*). They alone make the security and liberty of civilized life possible. Social cooperation without private property rights, and the security they bring, would almost certainly be less productive. Some liberals even claim, as a result, that “society can continue to exist only on the foundation of private property.” (Mises: 87)<sup>5</sup>

This is certainly true of the *commercial society*. Property rights have made human life free of the arbitrary and fickle will of other people, and of the arbitrary and fickle will of the government, by giving birth to the protected private sphere. Property is the prerequisite of a society in which people can *trust* each other to develop peaceful coordination for their mutual benefit. Hayek even went as far as to say: “The possibility of men living together in peace and to their mutual advantage without having to agree on common concrete aims, and bound only by abstract rules of conduct, was perhaps the greatest discovery mankind ever made.” (Hayek, LLL: 294) It is hard to prove such a point. But the great productive capacity of capitalism certainly suggests that private property has been instrumental in allowing for the developments of modernity. Such private property can be defended on consequentialist grounds as *vital* to the kind of civilization in which we live (*and* to the kind of society that might yet emerge).

Commercial civilization *begins* with the protection of property, but it needs laws to function. Let us now look at the element of government in this equation.

### 2.3 Limited Government: Freedom from Public Coercion

“[W]here there is no law there is no freedom”. (Locke, TTG: §57)

Limited government, of course, is an ambiguous term. *All* governments have limits, even the most tyrannical. (Even Hitler was theoretically kept in check by the *Volk*.)

But I claim that the liberal program is the only political philosophy where the question of devising mechanisms of limiting governmental power is the *core* methodological question.

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<sup>5</sup> To counter Rousseau's criticism, Mises might retort: 'But do you wish to destroy civilization?' To which Rousseau might reply: 'Yes! If by civilization you mean the chains of society.'

The importance of the government, and of its limitations, follows logically from property rights. Friedrich Hayek, in his classic work, *Constitution of Liberty* (1960), writes that "[t]he recognition of private or several property is [...] an essential condition for the prevention of coercion [because it is] the first step in the delimitation of the private sphere which protects us against coercion." (Hayek: 205) Where private property is secure, to quote Locke, "being all equal and independent, no one ought to harm another in his life, health, liberty and possessions." (TTG: §6) To establish and maintain property rights, we need a government to enforce security. But the government should limit itself, so that it doesn't become an agent of excessive coercion.

Another way of looking at the liberal project is to say that liberals want *certainty* in the government enforcement of well-defined property rights, but tolerate (high levels of) *uncertainty* in the resulting distributional pattern of people's private economic fortunes: "Within the writings of Locke and Smith and others in their school, a new ideal of social order appears in the political imagination of the West: an order of law-governed flux. Under this ideal, a central task of government is to provide a secure set of laws protecting property and exchange, laws equally applicable to all and known in advance to be more or less fixed. Within the stable frame of strong but limited government, however, all else is change." (Tomasi: 10) These principles are a blueprint for the limited government, and, as I shall argue (Ch. 5), for the limited welfare state.

The limited government is not a government without power, but a government with limited power. It is compatible with democratic, majoritarian and even welfare functions. But it is *not* compatible with intrusively paternalistic government control of the private lives of citizens. This was made most clearly in J.S. Mill's classic book, *On Liberty* (1859): "The object of this Essay is to assert one very simple principle" (which encompasses, in my scheme, the first *two* principles): "that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. [= Principle 1] That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. [= Principle 2] His own good, either physical or moral, is not a sufficient warrant." (Mill: 17)<sup>6</sup> This is, again, like Smith's

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6 Although we should point out that Mill himself, especially in his later years, was quite willing to

“system of natural liberty” (WoN: 533), a good formulation of the Three Principles.

Too much government intervention is a bad thing, because it inhibits the spontaneous and non-coerced development of society. There are no predetermined limits to the development and variety of such a society. With a minimum of rules, a maximum of diversity is allowed. So, paradoxically enough, the limitations, by reducing risk, increase risk-taking and productive experimentation.

The flipside is that the liberal society must be *neutral* as regards the particular ends and economic choices in the society. Nozick, for example, explains that the libertarian side-constraints “specify an ongoing process, *without* fixing how it is to turn out, *without* providing some external patterned criterion it must meet.” (Nozick: 207) Such an order of a free society is, to be sure, somewhat chaotic and unpredictable, but, under the property rights of the limited government, there emerges a “spontaneous order” (Hayek, CoL: *passim*) of “law-governed flux” (Tomasi: 10) conducive to “ordered anarchy” (Buchanan 1975: 18). All these technical-sounding terms actually refer to a very simple thing: with a minimum of rules, a maximum of beneficial outcomes develops, as individual humans improve their own lives. Limited government enables freedom, which, in turn, makes society more productive, prosperous and progressive.

Laws are limits that foster liberty. Classical liberal thinkers across the ages, despite multiple differences and many deviations, share, for the most part, a long-lasting methodological commitment to the notion of maximally limited government and maximally free individual action.

Across its variations, classical liberalism is usually not a theory of what *should* be done by people and governments (in order to *achieve* various objectives), but of what *should not be done* by people and governments (in order to allow for open-ended free choice). It is a doctrine of *negative* freedom, i.e. of setting up *limits* to coercive actions, in order to foster the peaceful coordination of the free actions of individuals. A regime of limited laws maximizes peaceful actions and reduces coercive actions to a minimum:

“The coercion which the government must still use for this end [of preventing

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sacrifice many of the principles of economic liberalism for other utilitarian ends.

people violating others' rights] is reduced to a minimum and made as innocuous as possible by restraining it through known general rules, so that in most instances the individual need never be coerced unless he has placed himself in a position where he knows he will be coerced. Even where coercion is not avoidable, it is deprived of its most harmful effects by being confined to limited and foreseeable duties, or at least made independent of the arbitrary will of another person.” (Hayek, CoL: 72)

Coercion is minimized, via organized coercion, under the rule of law. But, due to its theoretical, abstract and general nature, liberal doctrine does not offer simple solutions to concrete questions regarding legislative minutiae. Major disagreements may and do arise as to what kind of a regime of laws and regulations exactly fits these abstract ideal limits (to private and public action).

What sets the classical liberal apart from socialists, and also many welfare liberals, is not the anarchist desire to minimize the state, nor the selfish desire to maximize the freedom of individuals, but the civil and political desire to maximize peaceful, voluntary cooperation, and economic prosperity, *via* the doctrine of the limits – consisting of a limited government and well-defined property rights.

The ultimate aim of the classical liberal program is a free society balanced between anarchy and Leviathan. The “ideal society is anarchy, in which no one man or group of men coerce another,” (Buchanan 1975: 92) but unfortunately this is impracticable, since “each person seeks mastery over a world of slaves.” (*ibid.*) Thus Leviathan is unavoidable - but we must *chain the beast*.

## **2.4 Recapitulation: Limits as Safeguards of Freedom**

According to classical liberalism, government is a tool for protecting property rights of individuals, and thus of safeguarding human liberty. The government should do all it must (within its constitutional *limits*) to uphold a set of *limits on coercive action* – but not any more than that. The challenge, to quote Milton Friedman (1962), is the following: “How can we keep the government we create from becoming a Frankenstein



that will destroy the very freedom we establish it to protect?” (10)

Thus, to sum up:

1. The regime of **private property** is a) a *positive* program of granting individuals (through the dividing line between “mine and thine”) the monopolistic power to act *autonomously* within *their own* sphere, and of exchanging goods, and agreeing to voluntary contracts, with other property holders; and b) a *negative* program of depriving other individuals (*and* the state) powers of action beyond those limits. Any such violations, transgressions, will be punished by the state.
2. The **limited government** is a) a *positive* program of granting the state (through the establishment of political institutions) the monopolistic power to set up binding formal positive rules within its borders, and b) a *negative* program of depriving the state of illegitimate powers of expansion beyond those limits.

All classical liberals emphasize, in different ways, limited government and private property rights, as justifiable ethical *restrictions on (state and human) action*. But their differences, in the details, highlight some of the major disagreements of the proper end and extent of these limits. Is a classical liberal state compatible with the compulsory state education of children? Or publicly funded health services? What about environmental regulation? (I will argue, in Chapter 5, that yes, quite possibly, within limits.) Classical liberalism does not grant easy answers to these questions.

And although it is hard to accept the notion that all social democratic interventions into the economy constitute first steps on a “road to serfdom” (Cf. Hayek, 1944), or that we are faced with the black-and-white choice of “either private ownership of the means of production, or hunger and misery for everyone,” (Mises: 88) it is nonetheless plausible that the ethical doctrine of *limits* encapsulated by the classical liberal program contains a coherent and logical consequentialist doctrine against an excessive government.

The justification of such a doctrine lies in its capacity to produce beneficial outcomes on the *macro-level*, of rules and institutions, economies and cultures. The institution of

fixed rules does not guarantee optimal *immediate* or *local* results. But it is precisely because its long-term and large-scale benefits are so great that we should try to restrain from interfering in the particular and immediate cases. The slight local benefit we gain may come at the expense of a global disintegration of the system as a whole:

“Public utility requires that property should be regulated by general inflexible rules; and though such rules are adopted as best serve the same end of public utility, it is impossible for them to prevent all particular hardships, or make beneficial consequences result from every individual case.” (Hume, 1777: §257)

The classical liberal doctrine of limits is a very powerful set of rules to guide human action to prosperity without too much hand-holding. After setting a few firm limits on private and public coercion, the classical liberal doctrine lets the system run its natural course. John Gray comments: “[T]he usefulness of the whole system depends on it not being continuously threatened by utilitarian calculation. [W]e protect our interests and promote our welfare as best as we can, not by treating the rules of justice as at any moment defeasible by reference to private or public welfare, but precisely by treating them as almost invulnerable to such overthrow or abridgement.” (Gray: 124)

So, we should institute a strong, quasi-libertarian regime of boundaries between people and their property holdings to create a system where people can use their own capacities, knowledge, propensities and desires in a way that is most likely to create socially beneficial outcomes. Thus strong property rights *must* be a part of the limited welfare state that I am advocating (See: Chapters 5-6). To quote Mises: “Private property creates for the individual a sphere in which he is free of the state.” (67) Without such a sphere, it is difficult to coordinate the conflicting actions of individuals. The usefulness of fixed principles in advancing “public utility” (Hume: §257) becomes clear. Private property enables the sort of social cooperation that is conducive to enlargement of the opportunities for all citizens, in the long run. The benefits of the limits set by classical liberalism come from their overall long-term effects.

An understanding of liberalism as a doctrine of *limits* makes it possible to criticize liberalism as a doctrine that *imposes restrictions on* human action in very significant ways, even while it claims to *free* human beings from the bondages of tyranny and

violence. Freedom is only possible with(in) limits, restraints, borders, laws and, yes, police protection. These limits constrain human action, and government action, in significant ways. From this context it is also possible to sympathize with Rousseau's critique (1754). But I claim that the public utility of these restrictions far outweighs the negatives – especially if we complement the institution of thick private property rights with a limited range of public programs and a guaranteed social safety net.

## **2.5 The Limited Welfare State: Where Does It Come From?**

So what about the third principle? It arises on top of these two principles. This means that the limited government can incorporate a framework of limited government programs for general welfare and the public good. I shall look in depth at such a *limited welfare state* in Chapter 5. But how can we support both liberty *and* welfare? This seems to be a paradox. Are they not quite unrelated concerns?

“Classical liberals often do a poor job explaining why the liberal state can levy taxes to support social services. In defending 'interventionist' programs such as these, classical liberals sometimes invoke consequentialist values, such as the need to prevent social strife and thus maintain economic efficiency. But defended on that basis, it then becomes unclear why those interventions, but not others, are justifiable. At other times classical liberals advert to non-consequentialist concerns – such as natural duties of charity, or intuitively grounded obligations of beneficence – in an attempt to hold together the various parts of their view.” (Tomasi: 47)

I shall acknowledge the difficulty of drawing precise limits on government power based on purely consequentialist arguments. Rights-based approaches, especially of the libertarian hardcore variety, have the benefit of drawing precise boundaries, such as the Nozickean side-constraints. But this should not distract us. Who said that drawing boundaries was supposed to be *easy*? We can draw the general outlines, but the rules can be always improved, as our knowledge increases, and as the culture changes.

From Lockean, Smithean and Hayekian arguments, we can draw the conclusion that,

yes, strong property rights have strong consequentialist justifications; and yes, the government must have strict limits for the very same reason. But thinking about the beneficial and harmful effects of policies, rules and institutions also easily leads to the acceptance, as I shall show later, of various government interventions.

It is important to keep John Gray's, and David Hume's, warnings in mind: “[T]he usefulness of the whole system depends on it not being continuously threatened by utilitarian calculation.” (Gray: 124) Thus the welfare interventions should take a long-term view. Local and immediate micromanagement is incompatible with the Three Principles. But global and institution-level Pareto-improvements are quite acceptable.

The first two principles of liberalism can be justified because of their long-term and macro-level beneficial effects. The same logic allows us to justify a range of public interventions that improve the institutional framework and rule-structure of the society, without micromanaging citizens' lives. Public education, environmental protection, and a social safety net might be examples of such interventions. I will make the claim that such a utopian framework is a strong contender to the utopias of Nozick and Marx.

But first, let me turn our attention to John Locke who perfectly encapsulates the doctrine of limits and the Three Principles. He provides a combination of rights-based and consequentialist arguments in favour of them. Especially the latter, I claim, offer a good basis for defending the Three Principles of Liberalism and the Two Principles of Libertarianism. Later, a hardcore interpretation of them needs to be rejected, in order to develop further the welfare provisions that his “Proviso(s)” tentatively make possible.

### **3. John Locke: The Foundations of Classical Liberalism**

Why Locke? For two reasons: 1) His influence was huge in the classical liberal tradition. 2) He provided succinct formulations of the Three Principles. Let us analyse the *Two Treatises of Government*. I will be focusing mostly on the 2<sup>nd</sup> Treatise.

#### **3.1 Locke on Principle 1: Private Property**

Locke, in his *Two Treatises of Government* (1689), laid the foundations of private property for modern liberal philosophy. He showed its essential relationship to liberty and good governance. And although he did not invent the phrase "life, liberty and property" (and its many variations), he popularized and systematized it, based on the liberal thinking of the Whigs and the radicals.

He followed the "natural law" tradition, according to which there are laws that are independent of government power. However, it is not necessary for us to delve deeper into the natural law tradition. All we need to know, here, is that natural law is basically another name for the Three Principles of Liberty. It provides rational grounds (both rights-based and consequentialist) for the acceptance of property rights. The law of nature sets limits to action, in the form of proto-property rights, even *before* the institution of government:.

"The state of nature has a law of nature to govern it, which obliges everyone; and reason, which is that law, teaches all mankind who will but consult it, that, being all equal and independent, *no one ought to harm another in his life, health, liberty and possessions.*" (TTG: §6, my emphasis)

The equality and independence of people, even before any laws, means that people should not steal, rob, rape, attack or otherwise harm other people.

The first principle involves the demarcation of the institution of private property. In as many as *five* different sections in the 2<sup>nd</sup> Treatise, Locke writes that the chief aim of government is the "preservation of property". (TTG: §85, §94, §138, §226, §239)

The establishment of such limits against private coercion – the protection of the private sphere via the establishment of limits on what one person may do to another - derives from the self-interested actions of individuals in the state of anarchy. It is a principle all rational beings will accept. The, here, argument is essentially a combination of *a priori* rationalism, social contract theory, and rule-consequentialism. It is especially the last – rule-consequentialism – that I want to focus on.

The rules of private property – the limits of freedom – are social institutions. There are strong consequentialist arguments for their existence. Locke argues that private property is necessary in order to increase the *productivity* of the land, and thus increase the *wealth* of the society. He estimates that somewhere between 90% (§40), 99% (*ibid.*) or even 99.9% (TTG: §43) of the value of land and natural resources is due to labour exerted on it. As Locke repeatedly says, cultivated land far outvalues uncultivated common land. Land left uncultivated and commonly owned would be "possible not worth a penny" or "at least, I may truly say, not one-thousandth" compared to the value of an equal plot privately managed for gain and profit. (§43) Thus nature, before the attachment of productive labour upon it, in its raw state, has very little capacity of fulfilling man's needs. A wild berry field cannot compete with a cultivated field. Without private property, the value of natural resources would remain underdeveloped.

Private property is an instrument of wealth-creation that turns a wasteland into a flourishing civilization. Before the invention of money and private industry, "all the world was America": as was the case in the beginning of the world. (TTG: §49) Only labour, industry and exchange turned uncultivated wilderness into bountiful goods and property, because "land that is left wholly to nature, that hath no improvement of pastoral, tillage or planting, is called, as indeed it is, a waste, and we shall find the benefit of it amount to little more than nothing." (TTG: §42) Pre-laboured nature is practically valueless and it would be "a waste" to leave it untouched and unowned.

Private property is the fate of mankind: "God and his reason commanded him to subdue the earth" (§39) and, in each case, "labour put a distinction between [private] and common" (§28). Thus, although "God gave the world to men in common" (§34), he also allowed the industrious and the rational to make the most use of it: "He gave it to the use of the industrious and the rational (and labour was to be his title to it)" (*ibid.*). This happens by natural justice, since the industrious and the rational, due to their higher productivity, are capable of creating more wealth than the rest of mankind. This source of inequality is not a violation of justice, a) since such inequality is produced without hurting anybody else's rights, and b) since it actually *benefits* the whole society.

Although the Earth's fruits and riches were, indeed, given "to mankind in common" (§30), private ownership is necessary to *improve* it, and to actually enjoy nature's

offerings. The *common* stock of natural resources must be revoked and turned into *private* property "before it can do any good for the support of [man's] life" (*ibid.*), i.e. before the riches common to all can be put to any actual use. Thus the fate of the people in the "original communism" is bleak. They shall always remain poor and stagnant.

This gives rise to Locke's labour theory of property: "[E]very man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands we may say are properly his." (§27) Private property arises as an extension of one's labour productivity: "Whatsoever, then, he removes out of the state that nature hath provided and left it in, *he hath mixed his labour with*, and joined it to something that is his own, and thereby makes it *his property*." (*ibid.*, my emphasis)

This is called the "labour-mixing" theory of property. It gives rise to just claims to property, but *only* within the confines of the so-called **Proviso**: "...at least where there is enough and as good left in common for others." (§27) This means that there must be an *equal opportunity* for everybody. But as long as the Proviso is respected, private property should not be seen as lessening the chances of poor people, since "he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind". (§37) In modern terms, there occurs a Pareto-improvement.<sup>7</sup>

So, Locke is ultimately justifying the natural right of original appropriation on consequentialist grounds. Or rather, rights are thus sanctified. The extreme productivity of private possessions is beneficial to all mankind, and it allows people to divide the world's resources amongst themselves productively. Yes, it allows some people to get richer, but the wealth thus created will be shared in the market system; and it is the justified result of the use of the differing talents of individuals from an equal and free starting position. The result is a distribution of land and private property according to labour productivity: "God, by commanding to subdue [nature], gave authority so far to appropriate [property]. And the condition of human life, which requires labour and materials to work on, necessarily introduces private possessions." (§35)

However, this does not justify unlimited hoarding of possessions. Aside from the

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<sup>7</sup> Pareto-improvement takes place whenever a change in the system benefits everybody. Note that the distribution of the benefits does not have to be equal to count as a Pareto-improvement.

“enough and as good left in common” -proviso, the right to property is also limited by the lesser-known '**spoilage**' proviso. According to it, one is entitled to the full fruit of his or her labour *only* if he or she puts it to good use (i.e. consumes, sells or gives away the product thus created). Anything beyond this is a *misuse* of private property:

“The same law of nature that does by this means give us property does also bound that property, too. ‘God has given us all things richly’ (I Tim. 6.17), is the voice of reason confirmed by inspiration. But how far has he given it to us? To enjoy. As much as any one can make use of to any advantage of life before it spoils, so much may he by his labor fix a property in; whatever is beyond this is more than his share and belongs to others. Nothing was made by God for man to spoil or destroy.” (TTG: §31)

Since private property derives its justification from its capacity to increase the overall wealth of society, this obliges the property owner not to waste his production capacities. This Proviso makes sense if we understand its utilitarian basis:

1. Private property is justified if it “increases the common stock of mankind”
2. Spoiling or destroying property *decreases* the common stock of mankind.
3. Therefore, spoiling or destroying property is not justified.

These two provisos create important boundary conditions to property. If they are violated – as we must assume they often are – then property rights are not absolute. And this, indeed, is the reading of Locke that I want to defend.

Locke's idea of a free and equal starting position, where people can go appropriate land for themselves, does not really apply to today's situation. Thus land ownership becomes a monopoly on a scarce resource, as later thinkers like Adam Smith (1776) and Henry George (1879) have argued. It is arguable that land ownership always violates free markets and needs to be compensated. In Lockean terms, property, where there is *not* “enough and as good left in common for others” (§27) violates natural justice. The law of nature, let me remind the reader, means the Three Principles. Thus violations of the proviso(s) are violations of Principle 3. *The Provisos are examples of Principle 3.*



Thus, even if we convince ourselves that "men have agreed to a disproportionate and unequal possession of the earth" (§45), the situation needs to be compensated to those who do not have "enough and as good left in common" for them. This fact might imply a systematic system of taxation and redistribution.

Locke freely mixes consequentialist arguments – about the productivity of private property – with strict rights-based arguments – about how God gave men title to the land. Thus it fails to make clear what the "ultimate" moral foundations of property are. This causes ambiguity, because his theory of the origins of property can be read in a rights-based libertarian way (Nozick) or in a consequentialist way (the author).

However, here we only need to be aware of a few things: 1) Locke was very influential. Today, a defence of private property must begin with Locke. 2) TTG encapsulates perfectly the First Principle of Liberalism. Locke stated it quite clearly: The "government has no other end but the preservation of property" (§94). 3) His consequentialist defence of property will support our main argument in the thesis, that property rights and limited government are justified because they are *productive* institutions that increase "the common stock of mankind" (§37); and 4) The boundary conditions – Provisos – that he places on property justify a non-libertarian reading of Locke (which can even help to justify the limited welfare state).

### **3.2 Locke on Principle 2: Limited Government**

"The end of the law is, not to abolish or restrain, but to preserve and enlarge freedom." (TTG: §57)

With these words, Locke defends the second principle of liberalism: the limited government. It is an argument against anarchism *and* tyranny. Of course he is not being entirely honest here. When he says that law preserves freedom, he downplays the fact that it *does*, of course, at the same time, put *restraints* on people. But he wants to emphasize that *these restraints have a beneficial social utility*: they reduce *overall coercion* in the society. Freedom benefits from such targeted restraints. (Assuming we

are still talking about *good* laws.) The ideal government puts limits on thieves, libertines and anarchists. I shall quote the section at length here:

“For in all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law and is not, as we are told, a liberty for every man to do what he lists. (For who could be free when every other man's humour might domineer over him?) But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own.” (§57)

Since people are free and equal, one man's liberty is another's coercion: 1) If *A* does “what he lists” there will be coercion on *B*. 2) *A*'s “doing what one wants” is an impediment to *B*'s liberty. 3) Therefore, liberty cannot entail “doing what one wants.”

Let us take an example. The Biblical injunction “Thou shalt not kill” has a positive effect on the amount of freedom available in society. It decreases the freedom of individuals to kill other people; but it increases the freedom of individuals not to be killed. And since killing is a much worse act than the prevention of it - the act of killing destroys the freedom of the victim *absolutely* - the result of the reduction of acts of murder is a sum-total *increase* in citizens' total freedom (and all the accrued benefits).<sup>8</sup>

So we need political power. It is organized, primarily, to defend the 1<sup>st</sup> Principle:

"Political power [is the] right of making laws with penalties of death, and consequently also less penalties, for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in the defence of the commonwealth from foreign injury; and all this only for the public good." (§3)

Thus the libertarian core of the Lockean government is a government limited to the protection of “life, liberty and estates” against all coercion. The requirement of liberal justice is to punish transgressions of this principle. It begins in the state of nature and

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<sup>8</sup> On the other hand, there are plenty of laws which stand *against* freedom. The injunction against worshipping other gods and graven images is an example of a law that, however you look at it, is simply defined to *reduce* the worshipper's freedom (and to advance some other end: e.g. loyalty and piety).

continues in the state of society: “He that in the state of nature would take away the freedom that belongs to any one in that state, must necessarily be supposed to have a design to take away everything else, that freedom being the foundation of all the rest; as he that in the state of society or commonwealth, must be supposed to design to take away from them everything else, and so be looked on as in a state of war.” (§17)

Locke equated natural law with educated human reason: “The state of nature has a law of nature to govern it, which obliges everyone; and *reason, which is that law*, teaches all mankind who will but consult it...” (§6) This means that the acceptance of the first principle of liberalism is a rational deduction that can be independently verified – it “teaches all mankind who will but consult it” (*ibid.*).<sup>9</sup>

Man, in the state of nature, is “the absolute lord of his own person and possessions, equal to the greatest, and subject to nobody.” (§123) Nonetheless, the foreseeable and unforeseeable “fears and continual dangers” of such a condition of free-for-all anarchy make the free man “willing to join in society with others” (*ibid.*) for the “preservation of their property” (i.e. “lives, liberties, and estates”) - that being the “great and chief end” of all commonwealth and government. (§124)

But joining a dictatorship is no good. The limits to government power must be clearly demarcated in order to prevent abuses of power. According to Locke, arbitrary or absolute power is even worse than a state of anarchy. It is better to have *no* government, with all the inconveniences of anarchy, than to have a *bad*, tyrannical government.

Since men are born free (note the gender-bias<sup>10</sup>), and since the principles of justice arise from the state of nature, voluntarily becoming the subject of a commonwealth does not contradict natural liberty, but is simply the logical extension of it in a civilized society:

“The obligations of the law of nature ceases not in society, but only in many cases are drawn closer, and have by human laws known

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9 I dare even claim that the arguments of reason are *consequentialist* as far as they show the bad consequences of acting out of stupidity. One learns to be rational by bumping into obstacles.

10 It is not only a grammatical curiosity of 17<sup>th</sup> century parlance that “man” stood for the whole of “mankind.” This fact also reveals a systematic underestimation, or even denial, of the freedom and capacities of women. A society of free humans was literally a society of *men*, from which women were excluded, and pushed into the private realm.

penalties annexed to them to enforce their observation. Thus the law of nature stands as an eternal rule to all men, legislators as well as others.”

(§135)

What the “law of nature” obliges is respect for the limits of property. As I have stated, the “law of nature” is essentially a defence of the Three Principles. The first principle grounds morality; morality grounds the second principle; which, in turn, grounds politics. The second principle, in fact, is a natural corollary to the first. It almost follows transitively from it. There is no *separate* justification for the limited government. Its justification derives entirely from that of property, since it acts as the latter's guardian.

The security that the commonwealth provides *does* come at the cost of some liberty, namely the liberty to coerce others, to pay no taxes, and to enact private justice. But the security it provides is compatible with the maximum amount of liberty and happiness (utility etc.) for the society, and even for *oneself* as a rational agent. Contra Hobbes, law increases overall liberty, and reduces overall coercion, by making sure that violations of liberty are persecuted to the fullest. Far from people alienating their powers to a sovereign Leviathan - with an autonomous will – the people continue to be the *inalienable* source of sovereignty. They retain their innate rights<sup>11</sup>. They merely transfer a limited amount of their own power to the government for increased protection.

The best form of government that suggests itself to Locke is the republican commonwealth of limited government, centred on parliamentary decision-making checked by the natural liberty of citizens. "I easily grant that civil government is the proper remedy for the inconveniences of the state of nature" (§13). Because freedom is the protection of certain limits, there is more freedom under a limited government, which can protect those limits, than under no government, or under a tyranny.

"The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man in society is to be under no other legislative power but that established by consent in the

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<sup>11</sup>All this rights-talk is far from the consequentialism that I am advocating. And indeed, these are precisely the sort of passages that libertarianism derives from. But we should remember that all these *rights have consequentialist justifications* attached to them, even if they are not always obvious.

commonwealth; nor under the dominion of any will or constraint of any law, but what that legislative shall enact according to the trust put in it." (§22)

Lockean democracy starts with safeguarding libertarian principles. The Lockean parliament has (limited but pertinent) taxation and levying powers. These are justified by the needs of the state to uphold the rights of its citizens. The minimal requirements of the state are equivalent to the 'minimal state': police, army, justice system, etc. This is the libertarian minimal state. The classical liberal doctrine, as I have argued, *necessarily* has the minimal state as its "libertarian core" (which defends the first two interrelated principles of liberalism). So it is with Locke. But there is more to it.

Let us now explore how the Lockean limited government co-exists with *welfare*.

### 3.3 Locke on Principle 3: The Limited Welfare State

Locke's arguments for the more-than-minimal functions of government can be divided into three parts: 1) The argument from the Proviso(s). 2) The argument from Charity. 3) The argument from Democracy. They all converge towards the acceptance of the limited welfare functions of Principle 3. Their basis, like the basis of the rest of Locke's theory, is a hodgepodge of consequentialist, rights-based and social contract arguments. I wish to defend a consequentialist reading. Let us look at the three arguments:

**A) The argument from the Proviso(s).** We have already discussed these.

**B) The argument from Charity.** Locke believed that private property was the bedrock of society. However, it is sometimes not enough:

“[It] would always be a Sin in any Man of Estate, to let his Brother perish for want of affording him Relief out of his Plenty. As Justice gives ever Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity gives every Man a Title* to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise.” (TTG; I, §42, my emphasis)

The primary function of government, for Locke, is the protection of the natural rights of

the people. This has often been equated with the protection of property rights, and for a good cause. But since people also have a *natural right to basic subsistence* - “Charity gives every Man a Title” - the government should also protect the people against “extream want” [sic]. This principle is the third principle of liberalism. Private property and the limited government must also accept *Charity*<sup>12</sup>. And while he doesn't explicitly say it, this, in fact, constitutes a defence of a governmental assistance for poor people to meet their basic subsistence. The “extream want” [sic] of poor people justifies, does it not, the implementation of a social safety net:

“God hath not left one man so to the mercy of another, [...] but that he has given his needy brother *a right to the surplusage of his good*” (*ibid.*)

He believed that Principles 1 and 2 must be complemented with Principle 3. So Locke, the favourite of hardcore libertarians, was more of a “bleeding-heart.” In speaking of a “right” and a “title”, he is opening the possibility of a classical liberal welfare state. This theory is compatible with a compulsory redistributive scheme. (See Chapter XX.) Let us keep this in mind when we explore the libertarian readings of Locke.

**C) The argument from Democracy.** Locke was an eager parliamentarian. To the chagrin of many readers, the powers of Lockean parliamentary rule are not limited to a libertarian observance of the core property rights. He allowed for democratic legislation – even, in some cases, in direct contradiction to liberty. His ideal commonwealth can be read as a limited welfare state. (Its vagueness allows for libertarian and social democratic interpretations, too.)

He writes, recall, that “the law of nature stands as an eternal rule to all men, legislators as well as others.” (§135). The primary use of the law of nature is the protection of property. Thus “the chief end [of] government is the preservation of their property” (§124) But Locke *also* says that all the force of the state is “to be directed to no other end but the peace, safety and public good of the people.” (§131) Now, the “preservation of property” and “the peace, safety and public good of the people” are not exactly the same thing. (At least not necessarily.) And indeed, his statement that “property is to be regulated by the laws of the society” (§120) complicates this even further. In defence of

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<sup>12</sup> Charity, here, means Christian love – not charity as opposed to government welfare.

property, one can justify *one* set of actions. In defence of the public good, one can justify *another* set of actions. Sometimes they overlap; but sometimes they are in hard conflict.

Taxation for the purpose of the protection of property rights is obviously justified. It does not violate of property rights, because it is necessary for their protection. A certain amount of restraint on the absolute use of property is necessary in order to protect the institution of private property itself. This is what Hayek (1978) meant with the statement that “[f]reedom has been made possible by the restraint on freedom.”<sup>13</sup>

The need for common taxation, the provision of the army and the police, and the upkeep of the machinery of justice, even before we go beyond the minimal state, require non-absolute property rights. But these property rights can be further curtailed in other ways. The “public good” argument, together with his democratic zeal, lead to difficulties. Sometimes Locke writes as if he believed that the legislative acts of the parliament were, in effect, *willed* by the totality of the population (stemming from the original social contract), *even* if individual members disagreed with individual laws, or majority votes, in particular cases. Here, he is closer to Rousseau than Nozick.

In other words, a majority vote becomes, in Locke’s scheme, universally binding, because one must submit to the will of the majority. The limits of one’s freedom are partially determined by the outcomes of majority vote in a parliamentary decision making process. This is a problem for libertarians. Obviously the powers enacted to the legislative bodies are not unlimited, but they can be quite substantial.

The voluntary nature of the whole enterprise is put to question. Some statements give false hope: “The supreme power cannot take from any man any part of his property without his own consent.” (§138) I say *false* hope, because the republican nature of the consent becomes obvious later on. In fact, what Locke counts as consent turns out to be simply acquiescence to majority rule: the obeying of the laws “must be with his *own* consent, i.e., the consent of the *majority*”. [sic!] (§140, my emphases)

Such statements form the strongest basis for a *socialist* reading of Locke as an

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<sup>13</sup> From the transcript of the Bob Chitester video interview, part one, (1978), at 45'40".

unlimited democrat. They form a challenge to the libertarian reading of Locke. For the “bleeding-heart libertarian” reading that I am advocating, they are a mixed bag. On the one hand, the defence of democratic procedures is *necessary* for any limited welfare state. On the other hand, Locke here opens the door dangerously close to *democratic absolutism* and the legal oppression of citizens. And it is precisely this *unlimited* nature of democracy that classical liberals in the 19<sup>th</sup> Century fought against.

So let us now turn to the development of 19<sup>th</sup> Century classical liberalism and the birth of libertarianism. They gave up on the 3<sup>rd</sup> Principle while solidifying the *first two*. From the Three Principles of Liberalism we get: the Two Principles of Libertarianism.

#### **4. The Two Principles of Libertarianism: Against Welfare**

There is a continuity from Locke, via 19<sup>th</sup> Century liberalism, to Nozick. By understanding this connection, we can trace the libertarian interpretation of Locke, and reject its rejection of the welfare state. Nonetheless, the core of *libertarianism*, *within the bounds of the welfare Principle*, remains an important part of our Liberal Utopia.

##### **4.1 The Origins of Libertarianism: From Spencer to Nozick**

“A blind faith in spontaneous progress had taken hold of people's minds, and with the fanaticism of sectarians the most enlightened pressed forward for boundless and unregulated change in society.” (Polanyi :76)

The above quote refers to the popularity of classical liberal principles – especially economic liberalism – in the 19<sup>th</sup> century. They sought to transform society. But so did the welfare state, and the democratic parliament, which developed at the same time.

Most democracies, as a result of the developments of the 19<sup>th</sup> and 20<sup>th</sup> centuries, have adopted some welfare measures, and have done so in a way that has extended the power of legislation beyond what classical liberals traditionally thought was proper. In order to defend our *limited* welfare state, we need to understand how it is different from the *unlimited* welfare state. 19<sup>th</sup> Century liberals provided excellent criticisms of them.



The great classical liberals of the 19<sup>th</sup> century, Herbert Spencer in the United Kingdom, and Frederic Bastiat in France, raised red flags about the rise of unlimited legislation.

In *Man versus the State*, Spencer<sup>14</sup> argued, against the rising democratic tide, that "the authority of a popularly-chosen body is no more to be regarded as an unlimited authority than the authority of a monarch; and that as true Liberalism in the past disputed the assumption of a monarch's unlimited authority, so true Liberalism in the present will dispute the assumption of unlimited parliamentary authority." Thus the central concern of liberalism ought to be *limiting coercion*, whatever its source - be it the divine right of the king or the vulgar right of the *demos*.

By the end of the 19<sup>th</sup> Century, as Polanyi writes: "Inside and outside England, from Macauley to Mises, from Spencer to Sumner, there was not a militant liberal who did not express his conviction that popular democracy was a danger to capitalism." (Polanyi: 226) And they were right: unlimited legislation poses dangers to the rules that run the commercial society. Economic liberty is a necessary condition for the raising of the living standards of all. The silent erosion of the productive basis of society can be quite devastating. (See also: Locke, TTG: §48; Mises: 88; Hayek, CoL: 182) The Spencerian argument against unlimited democracy is still an important lesson.

Unfortunately, Spencer denied the possibility of (even a *limited*) welfare state. This is not a necessary consequence of the perfectly reasonable demand that *welfare functions be limited in order to safeguard individual liberty*. He went too far in his criticism. The libertarianism that developed from Spencer, while it correctly identified the danger in welfarism, unfortunately went too far in treating property rights as absolute.

In France, too, Bastiat argued, on explicitly Lockean grounds, in *The Law*<sup>15</sup> (1850), that any attempts to go beyond the very limited sphere of the minimal state are a "complete perversion of the law". The only function of the law is the protection of the *absolute* right to private property. This is Locke on steroids. Any redistributive measures are, in effect, *theft*. (Sounds like Nozick?)

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14 Online edition without page numbers.

15 Online edition without page numbers.

Bastiat's reading of the Lockean first two principles leads to a *rights-fanaticism*. I, on the other hand, wish to defend Lockean rights on *consequentialist* terms, modified by two Provisos and the law of Charity, and subject to limited democratic control. There is no *intrinsic* reason why private property owners should be entitled to the full ownership of their labour, *except* if such ownership is beneficial to the development of the society. (Lucky for them that a strong regime of property rights *is* indeed beneficial!)

Spencer and Bastiat failed to understand that even a commercial society, with a flourishing free market, needs a safety net for people who fall through the cracks. The process of “creative destruction”, whereby old means of production – firms, products and ideas - are ruthlessly replaced by newer and more efficient ones, is “the essence of capitalism.” (Schumpeter: 104). This is even more true today. Such a system desperately needs a government to balance the destructive power of the market.

Spencer's and Bastiat's radicalised interpretations, although an improvement in rigour and logical consistency, led to an obscene deification of the labour theory of value, and the treatment of property rights as absolutes in a way that is not justified based on the Lockean roots of classical liberalism. I propose a weaker version of the labour theory, according to which property rights are not absolute, but susceptible to enough taxation to fund a limited welfare system that implements a Basic Income Guarantee. (Cf. Ch.6)

But we do not have to linger with Spencer and Bastiat, because libertarianism is their 20<sup>th</sup> century heir. And the greatest thinker in that tradition is probably Robert Nozick.

#### **4.2 Robert Nozick: The Doctrine of the Minimal State**

Robert Nozick's *Anarchy, State and Utopia* (1974) is libertarian masterpiece. It also shows how libertarianism is different from classical liberalism. To be more precise, libertarianism is one (welfare) principle short of classical liberalism. It focuses on property rights at the expense of the positive role that government can play even in the liberal framework. Consequently, libertarianism is liberalism without welfarism.

Thomas Scanlon, in his essay on Nozick's theory, writes that “the conclusions of the book [...] are liberal in the nineteenth-century sense of the term.” (Scanlon: 107) We have already seen that 19<sup>th</sup> century liberalism, in the form that Spencer and Bastiat developed it, was moving fast in the libertarian direction. Nozick is following on that path. The result is the exultation of the minimal state, which is limited to the protection of property and contracts. Thus Nozickeanism is a form of radicalised Lockeanism. It leads to a devastating denial of the limited welfare state. “Citizens may band together for whatever other purposes they may desire – to provide education, to aid the needy, to organize social insurance schemes – but such schemes must be purely voluntary, and the state must enforce anyone's right not to be compelled to contribute to them.” (Scanlon: 107). The welfare state must be dismantled, destroyed, burned down.

Behind every society is the individual: “[T]he particular property rights protected by the minimal state are not licensed or created by it and consequently do not need to be defended as part of its justification. These rights are ones that individuals have quite independently of the social institutions in which they live.” (Scanlon: 123)

The property rights that emerge are not only *thick* (Tomasi: 91) and robust. They are *absolute* and unquestionable: “In enforcing these [absolute property and contract] rights the minimal state is only doing for them what they were already entitled to do for themselves. Consequently it is not doing anything that could be held to infringe anyone's liberty.” (Scanlon: 123) The minimal state derives its justification from what Thomas Scanlon calls “the natural right of non-interference” (*ibid.*: 124). But Nozick is right only if we accept that Lockean natural rights imply absolute property rights.

I want to argue that Nozickean libertarianism represents a reduced, simplified version of classical liberalism, that provides a systematically coherent and logically sound theory that has enormous appeal. But I also suggest that even Nozickean libertarianism, as simplified liberalism, cannot provide a sufficient basis for a good society, since the rights-based reading of Lockean property rights is very much underdeveloped. Locke's own account, where rights-based and consequentialist arguments are combined, provides a better, if messier, justification of thick property rights (limited by Principle 3). Nozick is continuing the classical liberal tradition, but he fails to do justice to the rich (rule-)consequentialist justifications for the Three Principles found in, say, Locke.

Since libertarianism is simply a coherent development of the first two principles of liberalism, its teachings have lasting value for *any* decent liberal society. I argue that libertarianism is a necessary but not a sufficient condition for a market liberal society. In other words, every great classical liberal utopia will need to have strong *libertarian principles* (of freedom from private and public coercion) embedded into its constitutional and welfare-providing structure. The important and necessary libertarian principles that any decent (classically) liberal society will have to respect lead to a strong commitment to the self-ownership of one's body and the inalienable right (for all tax-payers) to “capitalist acts between consenting adults” (Nozick: 163).

However, since libertarianism is not sufficient, these principles need to be supplemented by the third principle, which entails a limited welfare regime that protects the rights of the least well-off under the Lockean proviso. Libertarianism, in its denial of the right to minimum income and public goods, denies the basis for a decent liberal society. But we can also look at Nozick's theory more sympathetically: since it contains 2 out of the 3 Principles of liberty, it remains *mostly* right. Unfortunately, the one principle that it *did* drop proves to be vital to the justification of the rest.

But before I get ahead of myself, let us first take a look at Nozick's theory. We need to see where libertarianism succeeds in order to be able to see where it fails.

#### **4.2.1 Nozick on Principle 1: Unlimited Private Property**

Nozick immediately takes on the First Principle of Liberalism and embraces it fully. In order to develop it, Nozick takes the Kantian "side-constraints" approach to rights. This means that rights are defined *negatively*, as the *inviolability* of certain borders and limits (including the border of the human body, one's property, land and possessions). People constrain each other by defining the borders between them as the limits of their person. People are not to *impose themselves*, to intrude, without being asked. Such acts are *wrongs*, since they violate people's *rights*. (28-32)

Calling these rights “Kantian” is a bit misleading, however, since they are shared by the

other classical liberal thinkers, of whom Kant is one. Indeed, my argument is that Nozick is here simply reiterating the First Principle of Classical Liberalism, which he borrows from Locke and Kant, whom both formulated their own versions of it.<sup>16</sup> Thus Nozick's "side-constraints", the so-called Kantian rights that he takes for granted, could equally be called Lockean, Smithian, or Hayekian, rights. They are simply the Three Principles – or, as libertarianism rejects welfare, the *Two* Principles – of liberalism.

Nozick, in accepting the first principle, accepts liberalism as an attempt to limit coercion, defined as aggression against one's person and property: "Political philosophy is concerned only with *certain* ways that persons may not use others; primarily, physically aggressing against them." (32) The side constraints suppose the limits of private property; and the inviolability of one's own body as sovereign territory. The Lockean phrase "life, liberty and estates" encapsulates the entire domain of rights.

Nozick's libertarian creed is firmly individualistic: "There is no justified sacrifice of someone for others." (32) "There are only individual people, different individual people, with their own individual lives." (33) This leads to a conception of property as an extension of oneself. Any violation of my property is a violation of my person. We are all "distinct individuals who are not resources for others." (32) This leads to a firm denial of any redistribution as a form of aggression, rape or even enslavement.

His so-called "entitlement theory" (207-8) specifies a process for generating sets of holdings. He claims that if the initial **appropriation** is just – on simplified Lockean grounds – the property becomes the absolute dominion of its owner, who may do it what she wills. The only permissible way anybody can acquire property that belongs to someone else (who either acquired it by an initial appropriation or from someone *else* who acquired it by an initial appropriation) is by market **exchange** or as a gift. Property that is acquired in *any other manner* is subject to the principle of **rectification**, which specifies that the unlawful owner of the property has to give it back to its lawful owner and/or compensate for damages. These principles are the *totality* of libertarian justice.

The Three Principles of justice (which he calls, in terms slightly different than mine, "acquisition", "transfer" and "rectification") "specify an ongoing process, *without*

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16 For Kant's classical liberalism, see Fernando R. Téson & Bas van der Vossen (2012).

fixing how it is to turn out, *without* providing some external patterned criterion it must meet." (208) This theory is very elegant, since it cleans up the messier Lockean theory and sharpens the edges of the boundaries between people. As a theory of limits, it is absolutely brilliant. It leaves very little to ambiguity – except, of course, matters of criminal justice – and it thus satisfies Buchanan's criteria that the rights should be “well-defined and non-arbitrary” (1975: 18). If theories would be rated based on their elegance, Nozick's would rate very high. However, it has some serious flaws. Even though doctrines of limit need clear rules, they also need (especially in the absence of firm *a priori* justifications) consequentialist justifications – the sort that Nozick rejects.

I will argue that Nozick's “entitlement theory” is a good summary of the first two principles of liberalism – the “libertarian core” of classical liberalism – and it thus is very valuable for our analysis. However, the best justification for those *limits* that the entitlement theory is supposed to protect – the libertarian property rights – is based on the *socially beneficial nature* of those rights (cf. Locke, TTG: §30, §43) This means that, if the entitlement theory ends up leaving some people worse off, its justification is in jeopardy. It seems unlikely that a *purely* entitlement-based society, with no Pareto-optimizing redistribution, could be the best possible society for all people. (This, of course, is an empirical question. It all depends on the likely consequences. In some possible worlds Nozickean libertarianism produces the most wealth in the long-run. And, without trying, it is impossible to say whether we live in that world.)

I have no doubt that strong property rights – subject to *something like* Nozick's “entitlement theory” - are a very good mechanism for creating a dynamic society that benefits all people in the long run. But Nozick fails to give reasons (beyond the unsatisfying appeal to Kantian rights) why his system is immune from slight Pareto-optimizing modifications, tweaks, of the sort that I will provide in Chapters 5-6, where I defend the “bleeding-heart libertarian” version of the classical liberal welfare state.

Nozick makes repeated allusions to Lockean principles and themes. “The constraints are set [...] by the Lockean rights people possess” (171) in the minimal state. Nozick is not blind to problems that the simplified Lockean account brings. He openly acknowledges problems with *both* the “mixing labour” theory (174) and the “added value from labour” theory (175) of Locke. These are deeply embedded in Locke's

conception of property, which Nozick incorporates into his own theory. But Nozick fails to justify them, and even pokes holes at them, thus digging his own grave. In taking Kantian rights as given, *and* the Lockean appropriation as given, his theory is very shaky indeed: it is a beautiful construction built on top of a house of cards.

Nonetheless, his book contains a wonderful account of the minimal state. The elegance of the entitlement theory is matched by the elegance of the minarchist state. Even though its justifications are lacking, it contains grounds for a utopia that I will try to incorporate, with modifications, into "bleeding-heart libertarianism".

#### **4.2.2 Nozick on Principle 2: The Minimal State**

Nozick takes on the task of limiting government power by showing that government, in order to be good, must be limited by firm principles. First he needs to show that government *is* necessary, and *can be* just.

He claims that the minimal state can be seen to arise naturally, without violating anyone's rights. He takes the state of nature to be a largely a heuristic device: "We learn much by seeing how the state could have arisen, even if it didn't arise that way." (9)

People living in a state of nature, the classical starting position of Locke, are living in a state of freedom, which Nozick takes to be a state of free market anarchy. But, according to Nozick, no pure state of anarchy can last very long without ending being governed by a libertarian state: "Out of anarchy [...] there arises something very much resembling a minimal state or a group of geographically distinct minimal states." (16-17) This makes sense, since, the first Two Principles of classical liberalism are interrelated. Out of Principle 1 – the birth of possessions - there logically and transitively rises Principle 2 – the birth of government. And although Nozick's account is pseudo-historical, the point is the same: private property cannot exist (for long) without a common judge. Locke suggested the same. And the lack of anarcho-capitalist nations in the world also suggests that it is very difficult to have property without law. Indeed, one does not really *have* property rights, *unless* and *until* they are *enforced*.

The emerging minimal state needs powers of taxation. Indeed, at the first glance, "the night-watchman state [i.e. the minimal state] appears redistributive" (*ibid*: 27) because it extracts money from its citizens. And since Nozick is concerned with denying the validity of *any* redistribution, he has to somehow get around this inconvenient fact. His solution relies on the difference between compensatory and redistributive reasons: "Whether we say an institution that takes money from some and gives it to others is redistributive will depend upon *why* we think it does so. Returning stolen money or compensating for violations of rights are *not* redistributive reasons." (27) This constitutes Nozick's denunciation of all redistribution. If one is raped, one is entitled to compensations, but if one is poor, one is not entitled to redistributions. In the one case there is a crime, a victim, and a perpetrator; in the other case there is no crime, no victim (in the strictest sense of the term), and no perpetrator. This is a brilliant argument against the welfare state. After all, how can we justify taking money from someone who hasn't done anything wrong, and giving it to someone who has done nothing to deserve it? Surely there can be no justification for such transfers? But Nozick is here working with the assumption that the institution of private property is a process of encapsulating absolute property rights, rather than a social institution for the creation of wealth. The virtue of his theory is that its parts are quite clear. The property rights are clear; the functions of the state are clear; and the mechanisms of exchange are clear. But in order to justify the absolute justice of the holdings, one needs a better theory about the origin of property rights than Nozick has been able to give. In the absence of such a theory, one cannot rule out that, in fact, redistributions might be, after all, justified.

We will discuss the limitations and weaknesses of Nozick's arguments more in the next section, so let us have a quick look at Nozick's utopianism. In the last part - "Utopia" - Nozick aims to show that "in addition to being uniquely right, the minimal state is not uninspiring." (53). He proposes "a framework for utopias, [...] where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one can *impose* his own utopian vision upon others." (312) This is a worthy goal, I think. It is also perfectly compatible with the sort of bleeding-heart libertarian framework that we are working towards.

Human ingenuity knows no limits, so utopias know no limits. The only limits all utopian societies should always respect, and treat as moral universals, are the liberal



limits of liberty against violence and coercion (the 1<sup>st</sup> principle). This is where the minimal state (the 2<sup>nd</sup> principle) steps in, to protect dreamers. No Principle 3 needed.

“We argued in Part I that the minimal state is morally legitimate; in Part II we argued that no more extensive state could be morally justified, that any more extensive state would (will) violate the rights of individuals. [Now we must conclude that the minimal state] is the one that best realises the utopian aspirations of untold dreamers and visionaries.” (333)

#### 4.2.3 Nozick on Principle 3: The Denial of Redistribution

Concluding Part 1 (“Anarchy”), he writes that the minimal state is as far as we should go: “Having gotten from anarchy to the minimal state, our next major task is to establish that we should proceed no further” (146). And, again, opening Part II: “The minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights” (149). The minimal state is a government big enough to be able to enforce people's rights (the libertarian core); but not big enough to be able to violate them. It is *limited* government in the strictest sense of a *minimal* government.

My approach, as I have stated, attempts to justify a consequentialist reading of property rights. To this approach, Nozick is antagonistic. Nozick argues that utilitarian<sup>17</sup> calculations of maximizing welfare or happiness cannot be enforced without violating people's individual rights, property, side-constraints. The end, however noble, does not justify the means. Utilitarianism is only fitting for the welfare of animals. This leads Nozick to the formulation: “utilitarianism for animals, Kantianism for people” (39). Nozick's libertarianism thus leads to a denial of the importance of the 3<sup>rd</sup> principle.

Nonetheless, the situation is complicated by a) Nozick's respect for Locke's “Proviso” and B) the libertarian principle of rectification. Let us tackle the latter question first.

A) There is a Nozickean case for *some* (temporarily extensive) redistribution based on

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17 Of course utilitarianism, in the strict sense of maximizing happiness, is very different from the consequentialist arguments Locke has made in favour of property rights as *tools for prosperity*. Nonetheless, the same arguments that Nozick uses to attack Mill's utilitarianism apply to them.

his **principle of rectification**:

"Perhaps it is best to view some patterned principles of distributive justice as rough rules of thumb meant to approximate the general results of applying the principle of rectification of injustice. [...] [A]n important question for each society will be the following: given its particular history, what operable rules of thumb best approximate the results of a detailed application in that society of the principle of rectification. In the absence of such a treatment applied to a particular society, one cannot use the analysis and theory presented here to condemn any particular scheme of transfer payments, unless it is clear that no considerations of rectification of injustice could apply to justify it."  
(230-231)

Thus, in the short run, a more-than-minimal government might be justified even under the Nozickian paradigm: "Although to introduce socialism as the punishment for our sins would be to go too far, past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them." (*ibid.*) It all "depends upon how the distribution came about." (232) Nozick's emphasis on *historical justification* can lead to very different-looking results based on the particular historical facts of the society in question. Some societies might end up quite heavily *socialistic*.

Nozick's theory does not preclude a strong (if temporary) compensatory state if the origins of the property and wealth distribution can be shown to have unjustly arisen in violation of human rights. This faces huge empirical problems, of course. All attempts to justify state action (or inaction) based on history are subject to interpretation and fundamental epistemological problems. How does one *know*, or *study*, whether wealth distributions have arisen legitimately? Individuals, groups, ethnicities, religious groups, minorities, etc., can make claims that they have been the victims of systematic oppression. The onus of proof is on them, of course. In some cases the verdict is clear. But even in a clear case, such as ethnic cleansing, the calculation of the precise sum of compensation becomes a nightmare. Who are to be its recipients? The living victims of past abuse? The families and descendants of the victims? Everybody who comes from the same ethnic group, whether or not they were actually personally persecuted?

Pragmatically, it is perhaps best that we start from the present and not dwell on the past. The real past, if you look hard enough, is “red in tooth and claw.” Only the present has the chance of turning things around. This is why I do not think that historical arguments are the best place to start thinking about welfare questions. (But, of course, for Nozick's *historical* entitlement theory, history is the *only* place where he can start.)

At any rate, Nozick would be the first to admit that his theory cannot be used to justify or condemn the present distribution of holdings in any given society. It can only justify the distribution of holdings in such an idealistic libertarian society where rights have never been violated without just punishment/rectification. For the same reason, it cannot be used to defend or condemn any particular welfare state action(s).

B) In a chapter called "Locke's theory of acquisition," Nozick explores the **"enough and as good"** - **"Lockean" - Proviso** (175-176). Nozick attempts to rebut the claim that because the proviso is violated, no natural *right* to private property can arise.

Ryan comments: "If we take [the proviso] to mean that individual appropriation [should not be allowed to] diminish the freedom of others to use land and goods they now exploit in common, it is obvious that the proviso puts an effective throttle on almost any extensions of private acquisition". (Ryan: 338) Nozick must reject this conclusion.

To his credit, Nozick discusses the proviso in detail, unlike many other libertarians. He accepts its logic, but wishes to limit the proviso only to the most extreme cases: e.g. that "a person may not appropriate the only water hole in the desert" (180). Nozick believes that the proviso, while important, is not sufficient grounds for *fundamentally* deviating from a free market approach to organizing society: "the proviso will not play a very important role in the activities of the protective agencies and will not provide a significant opportunity for future state action" (182). Indeed, "the free operation of the market system will not actually run afoul of the Lockean proviso". (*ibid.*)

Jan Narveson, another libertarian, claims, on the same logic, that the Lockean Proviso "does nothing to support the idea of an enforceable obligation to maintain a 'safety net' of involuntarily supported social services. [...] the Lockean Proviso as Locke framed it is a mistake." [I]n the only form in which it is sustainable [...] it has no redistributive

implications, requiring only that people not acquire by force or fraud.” (127-128)

Interestingly for my purposes, Nozick discusses the feasibility of the Basic Income Guarantee (which we shall explore at length in Chapter 6). He considers whether it might, indeed, be justified by the Lockean Proviso and his own Rectification Principle. But he thinks not: 'Fourier held that since the process of civilization had deprived members of society of certain liberties [...] a socially guaranteed minimum provision for persons was justified as compensation for the loss [...]. But *this puts the point too strongly*. This compensation would be due those persons, if any, for whom the process of civilization was net loss, for whom the benefits of civilization did not counterbalance being deprived of these particular liberties.’” (178, footnote) So compensation would be due to those persons who suffered from the institution of private property. Nozick thinks that private property benefits everybody - even those *without* property. And since everybody is (assumed to be) better off as a result, there is no cause for compensation. However, hardly anybody – except hardcore libertarians – would claim that private property rights *always* benefit *anybody* who comes into contact with them. Most reasonable theories acknowledge that *some people* will *always* be worse off. From this conclusion, Nozick's conclusion might have to be reversed: If there are losers, they should be compensated. (And we shall suggest precisely such a scheme in Chapter 6.)

But I think that there is big a problem with the “everybody is now better off”-argument. Let us assume, for the sake of the argument, that everybody really *is* better off. Nonetheless, perhaps there exists another system, a better system, under which *everybody would be even better off* (or at least *nobody would be worse off*). Then the current system would be suboptimal. Surely we should be fighting to change the current society towards *that*, at least if we can get there via a Pareto-improvement?

After all, let us imagine a scenario: there are a hundred candy bars on the table. There are two people, A and B. A is faster and grabs 99 candy bars, leaving only 1 to B. And let us assume both parties acquiesce to the rules of the game. It is true that B is (slightly) better off than he would have been, had he not taken part in the game at all. (While A is exorbitantly better off.) But under *a different set of rules* for the game – say, according to which any single person can only acquire up to  $\frac{3}{4}$  of the total candy bars – B's expected outcomes would have been much better. Thus the rules of the game

seriously affected the outcome of his fortunes. Thus, from the fact that everybody is better off, we *cannot* draw the conclusion that rules shouldn't be tweaked even *further*:

Under certain reading, the Lockean proviso is sufficiently satisfied by the fact that poor people are better off under a system of private property and monetary exchange than in a system of common ownership of natural resources. No further redistribution would be needed. And indeed, if the market process can handle the (re)distribution, there is no need to rely on the Leviathan to do it. While Locke never *explicitly* advocates for a redistributive programme, he leaves the republican commonwealth with the power to decide upon its regime of taxation and public spending, in the interest of the “common good”, quite freely. And his argument from Charity (TTG: 1, §42) is quite clear: each man has a right to basic subsistence – even at other people's, *even* Nozick's, expense. (And, on this logic, I will defend the Fourierian Basic Income Guarantee in Ch.6.)

Overall, in discussing “The Proviso” (178-182), Nozick engages in a honest discussion about the Lockean proviso and its political implications. And while he rejects its *redistributive* implications (under normal conditions), at least he acknowledges that it poses serious questions, to which he does not always have good answers.

O'Neill I think pretty conclusively shows that the Locke-Nozick entitlement theory does not grant *unlimited* private property rights, since the original acquisition is theoretically suspect (O'Neill: 305-322). Thus: “Even if we share with Locke and Nozick the view that individuals have rights not be harmed in life, health, or liberty, we have so far no reason to accept entitlement theory” (O'Neill: 321) - at least as far as its justifying *total* laissez-faire capitalism. Recognizing weaknesses in Nozick's theory recommends “a retreat from Nozick's streamlined Locke” (*ibid*: 316). We may, however, accept a softened version of the theory, according to which property rights may be curtailed *only* so far as the equal freedom and opportunity of others is ensured by the limited range of permissible actions of the limited welfare state.

We don't need to go as far to completely reject Nozick's theory: we only need to draw certain boundary conditions around it (e.g. Locke's “Charity”: TTG, 1, §42.). Within those boundary conditions the entitlement theory rules: free market exchange, and voluntary interaction, determine all permissible moves and outcomes. Thus we can call

the resulting society *substantially* libertarian, but not *hardcore* libertarian, because it takes seriously the (however limited) public responsibilities of the government.

Nozick can guide us *half-way*. We need to re-imagine classical liberalism as bleeding-heart libertarianism. According to this view, a limited government and the free market can coexist: the first two principles of liberalism can coexist with the third principle. Freedom does not mean freedom from taxation. The government is limited but not minimal. But outside of the rule of law, all private action, no matter how morally questionable, and no matter how inequality-producing, are permitted, within the bounds of the Three Principles. The limited government enacts abstract and general rules, maintains a basic framework of security (including social security), and provides certain services and public goods for its citizens. But it does no more than this.

Libertarianism fails to prove that we should stop at the minimal state. Even Nozick's theory cannot do it. However, its elegance as an overall theory can give birth to a new respect for the “libertarian core” of classical liberalism. This only requires that absolute property rights are turned into *non-absolute-but-thick* property rights. The classical liberal approach shares with Nozick the idea that property rights and limits on state coercion are fundamental to any liberal utopia. But there is no reason why thick property rights shouldn't be compatible with the limited provision of public goods. (And indeed, in Chapter 5 we shall see how Tomasi, Smith and Hayek combine them.)

Is Thomas Scanlon right in claiming that in recent “contemporary moral and political philosophy, [...] economic rights and liberties have generally been neglected in favor of political and civil liberties” (Scanlon: 127)? It certainly seems that way: “Freedom of economic contract, a key feature of the free markets championed by classical liberals, is not recognized [...] as a basic right.” (Tomasi: 43) I must agree with Tomasi that the “[welfare] liberal neglect of [economic] liberty [i]s a significant moral defect.” (Tomasi: 3) The incredible wealth-creating power of the classical liberal doctrine of the Three Principles should be harnessed by people who want to help people. Economic liberty needs to make a comeback as a fundamental *right*<sup>18</sup> of all poor people.

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18 By “right”, I mean, as always, a system of rules that must be respected, and institutionalized, over long periods of time, in order for its good effects, and social benefits – what Hume called “public utility” – to show themselves. I do *not* mean an eternal principle that God and Reason can give.

Even Peter Singer, although very critical of Nozick, concedes that government-involving egalitarianism has become a dogma in political philosophy: “Political philosophers have tended to assume without argument that justice demands an extensive redistribution of wealth in the direction of equality; and that it is a legitimate function of the state to bring about this redistribution by coercive means like progressive taxation.” (Singer: 37) For such aims, notions like “private property” and “limited government” might seem outdated or even *oppressive*.

But they are actually *beneficial*. This is why limited “social justice” needs to limit the government. We should cherish and respect the libertarian core of liberalism made clearer by Nozick's theory - *without* accepting Nozick's definition of the minimal state. I will argue for a limited welfare state with strong libertarian principles. This is not a very radical departure from the classical liberal tradition; it is only its rediscovery.

But let me first recapitulate the differences between Locke and the libertarians.

#### **4.3 John Locke vs. Murray Rothbard: Why Liberty is not Enough**

We have seen that classical liberalism is a *doctrine of limits*, where limits are set to (coercive) *private* action and *government* action. (Principles 1 and 2 respectively)

The dilemma posed is essentially one of finding the balance between anarchy and collective coercion: “If [...] the collectivity is empowered to enforce individual rights, how is it to be preserved from going beyond these limits?” (Buchanan 1975: 13).

I wish to claim that libertarianism – as represented by Nozick and Rothbard – provides *one* perfectly logical development and radicalization of the Lockean-Smithean paradigm of limited government, but not the *only* possible such development.

Locke is often seen (by libertarians themselves) as one of the first to provide a justification, however fuzzy, of libertarian doctrine. This is true. He advocated the Three Principles - the first two of which (1 and 2) are very much libertarian. But Locke was not a *hardcore* libertarian. His libertarianism was softened by certain boundary conditions. Rather, we should rather say that libertarianism is a “stripped-down” Lockeanism: the Three Principles of Classical Liberalism... minus one principle.

Hardcore libertarianism can be summarized as the doctrine that...

*... every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with it, and joined it to something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to.*  
(Rothbard: 38)

This, of course, is actually a quotation from Locke's TTG (§27). What is more interesting is what Rothbard *leaves out*.<sup>19</sup> Cf. the entire paragraph in the original text:

***Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with it, and joined it to something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.***  
(emphasis added!) (TTG: §27)

It is obvious what the differences are. What is fascinating is that Rothbard has simply left out the non-libertarian elements in John Locke's philosophy. Thus, libertarianism is classical liberalism without welfare side-clauses. Robert Nozick repeats the same

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<sup>19</sup> I am indebted to Goodreads.com-user named "0spinboson" for pointing this out to me.



pattern: his “historical entitlement”-theory (Nozick: 207-208) derives from the very same Lockean paragraph quoted by Rothbard, with most of the “non-libertarian” bits dropped out. (Although at least Nozick takes the Proviso quite seriously.)

So, what are these non-libertarian bits that libertarians like to omit? They are, e.g., a) Locke's two Provisos; b) his argument from Charity<sup>20</sup>; and b) his argument from Democracy. Thus, the Lockean theory provides additional limits to the libertarian property rights not provided by Nozick's or Rothbard's readings of Locke. They also complicate the story, making it fuzzier, less clear – perhaps less elegant, too. But they enable a comprehensive consequentialist understanding of the aims of social institutions, in which private property is just one socially beneficial institution, whose justification cannot extend beyond the overall good fortune it may bring to society. Libertarians should try to reach back to these consequentialist “deep roots”, in order to maybe get a better sense of the role that institutional, legal and rule-justifications have in the arguments that people like Locke, Smith, Hume and Hayek make for liberty.

We can say that libertarianism is a radicalization of the classical liberal program: *Locke without Provisos, Charity or Whig politics*. The libertarians' property rights are more absolute than the regulated-but-thick property rights of classical liberalism.

Of course, such a radicalization of the liberal doctrine did not emerge out of nowhere. It was preceded by a few centuries of classical liberal talk about property rights and economic freedom. Libertarianism, for sure, is a logical development the 19<sup>th</sup> Century classical liberal tradition. It is *possible* to argue from Lockean premises, as Nozick does, that “the minimal state is the most extensive state that can be justified. Any state more extensive violates people's rights” (Nozick: 149). But the *minimal* state is only one possible interpretation of the *limited* state - and not the best one, either.

**The minimal state is governed by the Two Libertarian Principles. It is not enough.**

**The limited state is governed by the Three Liberal Principles. It is enough.**

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20 For a summary view, see TTG, First Treatise, §42: “As *Justice* gives ever Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise.” (TTG: I, §42); and for Nozick vs. Locke, see: Lloyd Thomas: 63-69.

The classical liberal interpretation is superior because it provides a limited number of public functions as a boundary condition to the libertarian society. Such a society, because it maximizes liberty without sacrificing the basic livelihood of anyone, “is morally legitimate [...] and] the one that best realises the utopian aspirations of untold dreamers and visionaries.” (Nozick: 333) The same, unfortunately, cannot be said for the antiwelfarist libertarian society for which these words were originally aimed at.

While I have criticized Nozick's theory of property rights as exemplifying a version of absolute property rights that is incomplete, we must also acknowledge that the libertarian challenge forces liberalism to hold onto the importance of property rights for any satisfying conception of justice. “It is the virtue of the book [Anarchy, State and Utopia] that it forces us to consider economic institutions not merely as mechanisms for the distribution of goods but also, like political institutions, as placing restrictions and demands on us which raise questions of obligation.” (Scanlon: 127)

If we take the libertarian challenge seriously, “it becomes apparent that questions of economic liberty must be considered, along with political and civil liberty and fair distribution, as conditions for the legitimacy of social institutions.” (Scanlon: 127) No liberal theory of justice, and no welfare principle, is complete or even justifiable without a thick conception of property rights (Tomasi: 91). The welfare principle of liberalism should be implemented *on top of* libertarianism, rather than *instead of* it. This project differs from many current welfare liberal programs. Such a project might be unpopular today, but, like Scanlon, “I hope this will have an impact on contemporary moral and political philosophy, where economic rights and liberties have generally been neglected in favor of political and civil liberties and rights of other sorts”. (*ibid.* 127)

I believe, with E.F. Paul, that the rediscovery of the limited government as a methodological, philosophical and political programme “provides a much needed antidote to the twentieth century fascination with the all encompassing, over-weaning, rights-violating, bureaucratic state.” (Paul: 276) The end result will be the **limited welfare state**, which, as I will now try to show, can provide a credible alternative to the *tyrannical* and *unlimited* welfare states that have risen up in recent centuries.

## 5. The Classical Liberal Welfare State

"The ultimate ideal envisioned by liberalism is the perfect coordination of all mankind, taking place peacefully and without friction." (Mises: 105)

I have defended the principles of classical liberalism on consequentialist grounds. A reading of Locke has suggested that classical liberalism needs to be justified on the basis of its social consequences, and that these consequences must also include considerations of public institutions and non-libertarian methods. I have rejected hardcore libertarianism and its denial of the welfare state. However, since I want to hold on to the "libertarian core" of classical liberalism, I must now explain how one can justify *any* version of the welfare state - without destroying liberty in the process.

So what is the proposed utopia? I take these two hypotheses to be simultaneously true:

A) It is immoral to "forbid capitalist acts between consenting adults" (Nozick: 163).

B) It is immoral to leave people without a guarantee of basic subsistence. (TTG: 1, §42)

The classical liberal welfare state should respect *both* freedom *and* welfare. The only way to fulfil condition (A) is to defend non-hardcore libertarianism. The only way to fulfil condition (B) is to defend some notion of more-than-minimal redistribution. Such a combined strategy can be defended on consequentialist grounds as Pareto-optimizing.

Many libertarians (and others) are afraid of the consequentialist logic. And they should be: it leaves *all* basic principles open to attack. Private property rights and the limited government, *if* understood as absolute libertarian first principles, *cannot* survive a consequentialist critique. Rights can only be justified for the consequences they have, and property rights also have negative consequences that must be systematically corrected for. And so we need a Pareto-optimizing (but limited) government. But at the same time, as Locke has already shown, and as Smith and Hayek will soon show, consequentialist logic also yields strong support for a comprehensive system of economic liberty, property rights, and limited government – much stronger support than most welfare liberals, let alone social democrats, are quite willing to accept.

Lockean property rights and non-hardcore libertarian freedoms, under limited government power, can be defended - and almost as strongly as under the rights-approach of Nozick or Rothbard - as undoubtedly the most efficient available means to raise the standards of living of the majority of the population. Thus, if we are truly concerned about helping the poor, and maximizing welfare, we desperately need a system of governance based on bleeding-heart libertarian, or classical liberal, principles. And it is my duty, in this chapter, to provide the blueprint of such a state, with a little bit of help from John Tomasi, Adam Smith and Friedrich Hayek.

### 5.1 John Tomasi: Bleeding-Heart Libertarianism

“Strict libertarianism [what I call 'hardcore libertarianism'] is biologically averse to such ideals [of social justice]. But classical liberalism, with its longer and more explicit history of concern for the working poor, is congenitally open-minded about distributive questions.” (Tomasi: 167)

John Tomasi's *Free Market Fairness* (2012) is probably the first book-length exposition of the “bleeding-heart libertarian” position. It argues that the classical liberal argument is basically right. It argues that we should choose *neither* (Nozickean) hardcore libertarianism *nor* accept a version of soft socialism as the only “just” society.

Tomasi defines the classical liberal position in terms that are, by now, familiar. The classical liberal utopia consists of “the system of thick economic liberty and limited government” (Principles 1 and 2) where the government also provides a limited range of public goods (Principle 3). (141)

It wishes to deny the argument that “[p]roperty is the enemy of social justice.” (Tomasi: 46) On the contrary: it is its natural companion. On consequentialist grounds, Tomasi argues that strong Lockean property rights and liberties are a fundamental part of any regime of social justice.

In the chapter “Property and the Poor” (pp. 127-142), Tomasi points out that a wide selection of classical liberals and libertarians, including Locke, Mandeville, Madison,

Spencer, Mises, Rand, Hayek, Friedman, Rothbard, Nozick, Mack and Epstein have argued, basically on utilitarian or consequentialist grounds, that (among other things) free market principles benefit the least well-off.<sup>21</sup>

1) **Bleeding-Heart Libertarian Argument 1:** Private property rights and limited government are the best means that poor people have for getting rich. It emphasizes the (direct and indirect) positive benefits – positive externalities and possibilities – that such a system provides for *everybody*. Such potential benefits of the free market include (for the sake of the argument), e.g. economic growth, rising living standards, cheaper consumer products, higher wages, developing technologies, better and safer jobs, possibilities of getting rich, choosing one's own occupation, pursuit of happiness, etc.

These results are often ignored in welfare liberal calculations, or outright dismissed, because they are not the visible results of any government action. However, on purely consequential grounds, they are just as important, or even *more* important, for the improvement of the poor, than *any* government action. The huge gains in social utility caused by the reduction in overall coercion that a regime of strong private property rights brings about are a perfect example of how social benefits often include invisible, distant and hard-to-measure effects for the *whole* society. Thick economic freedom, under a limited government, is an excellent way of building up chains of long-term benefits. Thus *the limited welfare state needs its libertarian core* – principles 1 and 2 – in order to maximize welfare for everybody, in an efficient way, in the long run.

2 ) **Bleeding-Heart Libertarian Argument 2:** The markets alone, while efficient and beneficial, are not *enough*. The libertarian core needs to be supplemented by public welfare measures. This justifies a limited range of public actions under the third principle, since “the public provision of a social minimum is needed to guarantee the effective exercise of citizen's basic liberties.” (Tomasi: 49)

Here Tomasi agrees that social liberal terminology – most notably, ideas of 'fairness' and 'social justice' - are roughly appropriate in determining the aims of institutional policy: “Classical liberals should be concerned about how the system of thick economic liberty and limited government affects disadvantaged citizens because they should insist that the distribution of goods and opportunities be fair.” (Tomasi: 141) Thus,

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21 Although at least Rand, in that list – and perhaps Spencer, too – were actually very cold-hearted.

contrary to hardcore libertarianism, bleeding-heart libertarians argue that there should be “a tax-funded safety net even for the destitute.” (Tomasi: 49) The resulting limited welfare state aims to “set principled limits on the redistributory ambitions of the state, while defining a threshold below which no class of citizens should fall.” (Tomasi: 94)

The end result is *not* a bureaucratic welfare state. Redistribution operates largely under the rubric of a simple and general system. And it does not aim to subvert the market, or control its direction.

”Within market democratic regimes, the distributional requirements of justice are to be pursued mainly through the forces of spontaneous order.” (Tomasi: 87)

The end result is a society that is still fundamentally libertarian, but a society that incorporates the third principle of liberalism. It is, in other words, a liberal democracy where welfare is provided under a “system of thick economic liberty and limited government” (141).

Let us now turn to Adam Smith, who was perhaps the first to provide the outlines of a free market society with a significant role for state institutions. I claim that Adam Smith can be read to provide the outlines of a classical liberal limited welfare state, where all the Three Principles of justice are respected. It is even possible to consider his solution the *first* bleeding-heart libertarian utopia.

## **5.2 Adam Smith: The Roots of the Limited Welfare State**

Here, I will try to show that Adam Smith's proposals for society and government are a decent blueprint for a liberal welfare state. I will focus on the *Wealth of Nations* (1776; hereafter WoN), although of course Smith's thinking extends beyond this seminal work. As soon as we look at WoN, we see that Smith was a firm believer in the Three Principles of liberalism. He is also one of the strongest consequentialist-utilitarian defenders of the free market under a limited (welfare) state, so his work helps us formulate even more clearly why welfare (or social utility) should be seen primarily *not* in terms of a static distribution of assets in the society (dividing the pie), but in terms of fostering the dynamic development of the productive assets of the society (increasing the pie). Thinking simply in terms of *existing* assets will cause great harm to society.

The importance of economic freedom arises from such consequentialist reasoning. The best way to make people better off is to follow the classical liberal doctrine, which, in its simplest form, can be summarized as: 1) the defence of a *government limited in its functions* to the provision of what is needed for the protection of 2) *individual rights*; supplemented by the production of a 3) *limited range of public goods*.

Letwin summarizes: “the proper functions of the government, according to Smith, are to provide national defence, administer justice, maintain certain public works, ensure education of the young, and perhaps subsidize religious instruction.” (Letwin: 68)

Smith defends this vision on utilitarian grounds as the best way to advance the common good. Or, to quote Smith himself, in a commercial society, “[e]very individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society, which he has in view. But the study of his own advantage naturally, or rather necessarily, leads him to prefer that employment which is most advantageous to the society.” (WoN: 348) Evensky adds the important caveat: “Or at least so it would be where there is 'perfect liberty'” (Evensky: 192), which can never truly be.

One of the great insights of Smithean liberalism is that the pursuit of self-interest may further social goals. This is a strong utilitarian defence of the first two principles of liberalism. Setting limits on private and public coercion benefits everybody in the long run. This notion, of course, relates to the famous “invisible hand” -argument:

”By preferring the support of domestic to that of foreign industry, he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, *led by an invisible hand* to promote an end which was no part of his intention. Nor is it always the worse for the society that it was not part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.”

(WoN: 349-350, my emphasis)

The society gains massive, often hidden and unknowable, benefits from leaving people

largely alone to pursue their self-interest. The crucial point is that if we wish to promote socially advantageous ends (from peace to prosperity), one of the most advantageous means to this end is *not interfering with other people's business*. Promoting good ends, via government and other designed institutions, often backfires. In fact, trying to do good is often one of most effective ways of doing harm. (See also Friedman: 27-36).

The capitalist profit motive, which is only possible where private property is firmly established (under Principle 1), advances the common good of the society. The full title of the book is *An Inquiry into the Causes and Nature of the Wealth of Nations*. The socially beneficial result is “Wealth” - which means the GDP but also more than that – and the “Causes” are good government policies, free trade and capitalist production. The radical lesson of the book is that *removing* government restrictions and regulations can be one of the main causes of the creation of wealth. The Smithian paradox is that the most efficient policies can sometimes be the most passive.

Economic freedom needs a framework of laws that fosters peaceful and voluntary exchanges. As Buchanan writes, under conditions where “rights are known to be well-defined and non-arbitrary” and where knowledge about them is widely shared, “economic interchange becomes almost the archetype of ordered anarchy.” (Buchanan 1975: 18) Because, “[h]aving defined and accepted a structure of rights, individuals can reduce their own investment in defence and predation and go about their business of increasing utility levels through freely negotiated dealings with each other.” (ibid.: 50) The overall result is highly beneficial to society, but also chaotic, and hard to measure. The “utility levels” are subjective, but the sum total of the interactions of the people causes objectively measurable benefits, such as the growth of cities and new industries.

The lack of *patterned* outcomes, and *predictable* results, makes it hard to justify (how can you justify something that is invisible and unknowable?) - and harder to *talk about*. And yet it is precisely this non-patterned, unpredictable nature of the system that makes it so productive, beneficial and indispensable for an advancing commercial society.

Smith warns against excessive government power: “[T]he profusion of government must, undoubtedly, have retarded the natural progress of England towards wealth and improvement” (WoN: 270). The main source of wealth is not government policy, but the private action of free individuals: “In the midst of all the exactions of government,



this capital has been silently and gradually accumulated by the private frugality and good conduct of individuals, by their universal, continual, and uninterrupted effort to better their own condition. It is this effort, protected by law and allowed by liberty to exert itself in the manner that is *most advantageous [to society]*.” (*ibid.*, my emphasis)

He continues: “It is the highest impertinence and presumption, therefore, in kings and ministers, to pretend to watch over the economy of private people” (*ibid.*). The private sphere must be protected from counterproductive interferences. He laments that “England [...] has never been blessed with a very parsimonious government.” (*ibid.*) The phrase “parsimonious government” means limited government. (Principle 2) It is a “blessing” to limit the ability of governments to pester and control “the economy of private people”. The commercial society must incorporate a classical liberal “doctrine of the limits” in order to maximize its capacity for wealth-creation. People must learn to respect each other's private spheres, and to keep legislation modest.

Government should concentrate on producing public goods and leave the people, in their private business, alone. Such a course will benefit everybody in the long run:

“The security which the laws of Great Britain give to every man that he shall enjoy the fruits of his own labour, is alone sufficient to make any country flourish, notwithstanding\_[mercantile impediments] and twenty other absurd regulations of commerce. [...] The natural effort of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful a principle, that it is alone, and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operations.” (WoN: 417-8)

Thus the utilitarian-consequentialist argument justifies a strong private sphere. But he also sees a role for public institutions in furthering the commercial society: “Thanks to [the country's] laws and institution, 'the yeomanry of England are rendered as secure, as independent, and as respectable as law can make them' (WoN: 325), and '[t]hose laws and customs so favourable to the yeomanry, have perhaps contributed more to the

present grandeur of England than all their boasted regulations of commerce taken together.' (WoN: 305).” (quoted by Evensky: 180) These passages suggest that laws can do a lot of harm *or* a lot of good, depending on their form and character.

Tomasi writes: ”Smith was convinced that the surest way to improve the condition of the poor over time was by creating the conditions of a flourishing free market. [...] It was this idea that led Smith to advocate the *carefully bounded social welfare programs that have so long been part of the classical liberal tradition.*” (Tomasi: 9, my emphasis) He wanted the market society to be supplemented by a limited range of public works, industry-encouraging legislation and welfare programs

Underlying Smith's faith in the market system was the belief that what is productive of the growth of opulence is “[o]rder and good government, and along with them the liberty and security of individuals. [...] When [people] are secure of enjoying the fruits of their industry, they naturally exert it to better their condition.” (Evensky: 18)

The economic utopia that Smith argued for was one of a mostly free market under a limited government: a “society where things were left to follow their natural course, where there was *perfect liberty*, and where every man was perfectly free both to choose what occupation he thought proper, and to change it as often as he thought proper. Every man's interest would prompt him to seek the advantageous, and to shun the disadvantageous employment.” (WoN: 82, my emphasis) The main instrument of prosperity, which benefits the whole society, including the poor, is economic freedom. A limited welfare state *is* permissible, but it is not the main engine of welfare. One cannot maximize social utility, or anything of the sort, by government alone. One needs long-term rules of justice, including thick property rights, and the voluntary efforts of private individuals, to create suitable conditions that can allow the society to thrive.

Smith saw history as a progressive development of humankind from one stage of civilization to another. He believed that the commercial society was the most productive civilization thus far, and that it could be even more productive, if it allowed the private efforts of individuals to improve their own condition. Evensky explains, “the liberal plan is the best constitution for the working class because it produces the greatest wealth for the nation and distributes that wealth most justly [... while] the

freedom and security it affords each individual encourages the most productive use of resources.” (Evensky: 13)

Smith' limited government is quite far removed from the libertarian night-watchman state. Some (Saastamoinen, 1998) have wanted to see him as a social democrat. Winch might even be right in that “for Smith, the government in civilized communities had to be strong, adaptable, and probably expanding, even if he hoped its operations would not be extensive and detailed in the economic field.” (Winch: 97) After all, a limited government can, and probably should, be strong and adaptable. Too little government causes social harm much in the same way that too much government does. The liberal doctrine does not forbid public interventions – it only *circumscribes their boundaries*. Within these limits, the government has the power to render services.

The state should, for example, subsidize the production of **public works and the education of children**. With regards to public works, “these should be paid for by their immediate users [...]. Here again [Smith] applies the free-market principle that every person should bear the full cost, no less and no more, of consuming what he chooses. In its broader political implication, this corresponds to the liberal intention to arrange matters, as far as possible, so that each individual bears the consequences of his own action”. (Letwin: 73) Wherever possible, one should favour a *market-based* or a *market-friendly* solution. This places necessary limits on government power and size. (This is no dogmatic argument, but rather a utilitarian calculation about which method of action is likely to cause more harm than good.)

In addition to general public works, “it is essential, for both the private and public good, that government provide education to those perversely affected by” the division of labour in a commercial society. (Evensky: 226) “The man whose whole life is spent in performing a few simple operations [...] generally becomes as stupid and ignorant as it is possible for a human creature to become.[... And] in every improved and civilized society this is the state into which the labouring poor, that is, the greatest body of the people, must necessarily fall, unless government takes some pains to prevent it.” (WoN: 603) Thus the government should take pains to prevent this calamity. More specifically, it should subsidize the education of the labouring poor, “that is, the greatest body of the people” (602). There is, however, no need for the government to provide for those who

can afford to educate their own families. Thus, although Smith was in favour of publicly funded education, there are limits to how far public monopolization should be taken. The erosion of market forces, implied by the involvement of the government in these fields, carries considerable risks to public and private welfare.

A commercial society requires a framework of institutions, laws and regulations to produce the most opulence; but these government provisions, in turn, must be sensitive to the needs of the commercial society – mainly to let the principles of free trade and commerce spread wealth. The whole Smithean enterprise hinges on the beneficial effects of the liberal policies. Smith saw that “a key reason for England's commercial progress beyond the rest of Europe was its escape from many of the illiberal positive laws that constrained those other nations” (Evensky: 66).

If we study the Smithean program of a limited government, we can, perhaps, find a way for the state to provide for the basic welfare needs of its citizens, without succumbing to the temptations of the bureaucratic, tyrannical and over-expansive – not to mention over-expensive – dangers inherent in the Leviathan. The goal ought to be a liberal utopia where, as Smith put it, “[e]very man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way [...] and where] [t]he sovereign is completely discharged from [...] the duty of superintending the industry of private people[.]” (WoN: 533) Such a utopia, with its unique appeal, is worth recapturing from the ultra-libertarians and the anti-liberal welfare statist alike. The only way that people can be “left perfectly free” is if the private sphere is delimited by strong property rights, and if the rest of the law-regime is firmly in place. The Lockean-Nozickean “side-constraints” are the means to achieve a progressive society. The protection of the private sphere, and the nurturing of its productive capacities, is an essential part of the institutional methods of any welfare state worthy of the name.

Of course, as Kari Saastamoinen (1998) notes, “[t]he state had also the role to provide such services whose supply was necessary for the sake of the public good, but which individual citizens were not economically incentivized to provide. *This range of activities, for Smith, was by no means insignificant.*” (52, emphasis added)

But before we conclude that Smith was an *unlimited social democrat* we should

remember that these interventions were limited by certain principles of good governance and market-friendliness. The social welfare measures should support, rather than hinder, the progress of the nation of free people. He calls his system the “system of natural liberty”, which is a blueprint of the Three Principles of liberalism:

“According to the system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: (1) the duty of protecting the society from violence and invasion of other independent societies; (2) the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and (3) the duty of erecting and maintaining certain public works and certain public institutions which it can never be for the interest of any individual, or small number of individuals, to erect and maintain”. (WoN: 533-534)

The first two duties – simply, army and police – fall under the “nightwatchmanstate” (Principles 1 and 2), while the third duty – public works and institutions – is the welfare state. (Principle 3) This is a perfect statement of the Three Principles of Liberalism.

We can now say that Smith was, indeed, a classical liberal. He not only laid the economic foundations of a prosperous commercial society, but also outlined the liberal framework suitable for it: “All systems, either of preference or of restraint, therefore, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord.” (WoN: 560) Adam Smith's Britain was quite different from today, which has led many people to consider WoN outdated. But while some of the particular problems in the book may have lost their relevance, the main insights about the commercial society, and the dangers to individual liberty, have not. The consequentialist arguments for free trade and private property are strong. Freedom, while it initially gives to some more than others, also benefits the whole society.

It remains an important task to rescue the legacy of Smith from the claws of the hardcore libertarians, who conflate their own positions with those of Smith, *and* from the the social democrats, who do the same. Unlike the libertarians, Smith believed in the 3<sup>rd</sup> Principle. And unlike the social democrats, he believed in free markets. The

Smithean *limited welfare state* uses market means to achieve social benefits.

Smith's justifications for public education and the provision of public works are typical examples of the limited welfare state that respects the Three Principles of Liberalism. Smith's arguments about the wealth-creating power of economic freedom add support to the consequentialist arguments of Locke and Hume. Another person who continues in that same tradition is Friedrich von Hayek, to whom I shall turn next. He enables us to take the Smithean, Lockean and Humean arguments into the context of the contemporary welfare state debate, which we have been itching to get to.

### 5.3 Friedrich Hayek: The “Neoliberal” Welfare State

Friedrich Hayek is one of the most hardcore defenders of economic liberty. He has a reputation of being the great antagonist of the welfare state. In the *Road to Serfdom* (1944), he argued that the trend of increasing government powers, for the sake of doing good, is a slippery slope to the erosion of human liberties. So we should expect him to be definitely against *any* notion of the welfare state. Right? But what if it turns out that Hayek, contrary to his reputation, is actually in favour of a large number of government programs? Of course it shouldn't surprise us. We have already seen that classical liberalism, except for its hardcore libertarian wing, does *not* advocate limiting government down all the way to the minimal state. To be sure, Hayek wanted to set down some very strict rules against the expansion of the welfare state. It is also true that he went quite far in opposing the very notion of “social justice.” (See below.) But he also allowed for enough government activity, on consequentialist grounds, to count as a bleeding-heart libertarian. We shall see that a *Hayekian limited welfare state* is not only a possible outcome, but a necessary part, of his philosophical system.

But let us first look at Hayek's defence of economic liberty and the spontaneous order. We have seen that Adam Smith, following the Mandevillean logic, famously argued that the private actions of individuals, uncoordinated by common aims, lead to unintended public benefits. Thus a good society should leave as much as possible of the decision-making of economic life in the hands of its private citizens. A similar consequentialist-utilitarian argument is made, *a fortiori*, by Hayek:

”The possibility of men living together in peace and to their mutual advantage without having to agree on common concrete aims, and bound only by abstract rules of conduct, was perhaps the greatest discovery mankind ever made.” (LLL: 294)

Hayek saw himself as a follower of Locke, Smith, Burke and the other Whigs. He consciously attempted to follow that tradition in his CoL (1960); and develop it further in LLL (1982). His argument is quite thoroughly consequentialist or rule-utilitarian.

Property rights are the best means to economize scarce resources: “The rules of property and contract are required to delimit the individual's private sphere wherever the resources or services needed for the pursuit of his aims are scarce.” Consequently, people must submit themselves to ”abstract and general rules that have been evolved to limit coercion both by other individuals and by the state” (CoL: 209)

He argues that the evolution of liberal laws culminates in ”the essentially negative confinement to a range of actions that will not interfere with the similarly recognized spheres of others.” (Principle 1) The limited government is achieved when the laws are non-arbitrary, general and abstract (Cf. Locke, TTG: 148); and when they refer to an unknown number of people in an unknown number of instances. Liberty is achieved under ”the reign of general and equal laws.” (CoL: 222) (Principle 2)

The government, as the legal framework for the protection of the private sphere, must follow principles and guidelines that facilitate the market order. Hayek's *amoral* understanding of the market as a “spontaneous order” (CoL: *passim*) justifies a large degree of economic inequality. This is probably the origin of Hayek's reputation as the ultimate enemy of the redistributive welfare state.

The chapter in CoL, ”Taxation and redistribution” (430-450) contains a harsh attack on the ideas of redistributive justice. He opposes the progressive income tax (CoL: 441) and wishes to ”limit the maximum rate of direct taxation.” (CoL: 450). However, his opposition to the progressive income tax is not a necessary consequence of his principles. There is no reason why a slightly progressive scale would not be compatible with the liberal demand for generality and universality. Indeed, Smith thought so much (WoN: 653).

Perhaps the most anti-welfarist section in all of Hayek's writings is his attack on the

concept “social justice” found in Volume 2 of LLL (169-341: “The Mirage of Social Justice”). He really hated that word, and people who used it. The gist of it is this: “Strictly speaking, only human conduct can be called just or unjust. [...] To apply the term 'just' to [the society as a whole] is a category mistake.” (LLL: 198) Hayek thus argues that 'social justice' is a *meaningless* term.

This derives from his understanding of the market society as the result of the spontaneous actions of individuals following the rules of free market exchange. Of course fraud, theft and murder should be punished. But beyond this justice has no role. In the marketplace, there are also winners and losers, but these are a) necessary for the system to operate; and b) nobody's fault. It may be unjust that bad things happen to good people. But it is nobody's fault. It just happens.

However, I think Hayek puts the point too strongly here. He is right that we probably shouldn't apply the word “unjust” to the unfortunate fact, say, that some firms succeed while others go bankrupt. Such uncertainty is part of the rational expectations of individuals. But we *can*, and *should*, criticize the justice or injustice of the public institutions and legal frameworks of society. So, in the case above, if the owners of the firm that went bankrupt are not granted a social safety net (which Hayek supports) and are driven homeless, this is probably a case of *unjust institutions*. A society where, say, education, welfare and environmental protection are not sufficiently granted to all people should be called 'unjust', precisely in the same sense that violations of the 1<sup>st</sup> Principle of liberalism in the case of thefts and murders are patently 'unjust.'

Overall, I think Hayek's argument is very problematic and one-sided. The important lesson, for my analysis, is that it suggests that we should limit redistributive interventions to the most general level, by tweaking the abstract rules of the game. (This seems to suggest something like a Basic Income Guarantee. See Chapter 6.)

Hayek also shared the 19<sup>th</sup> Century liberals' distaste for majority rule, and much for the same reasons: “democracy has yet to learn that, in order to be just, it must be guided in its action by general principles.” (CoL: 441) Unlimited democracy, without sufficient boundaries, is “an open invitation to discrimination [whereby any] pretended principle of justice must become the pretext for pure arbitrariness.” (CoL: 441)

However, this is not the end of the story. Despite his reservations for active redistribution and 'social justice', he allowed that the state had an important role to play



beyond the minimal state. This is the limited welfare state.

"The coercive activities of government are by no means its only tasks. [...] Under modern conditions [...] it seems hardly practicable that government should provide such services as the care for the disabled or the infirm and the provision of roads or of information without relying on its coercive powers to finance them. [...] Up to a point, most of us find it expedient, however, to make such contributions on the understanding that we will in turn profit from similar contributions of others toward the realization of our own ends." (CoL: 211)

He allowed for many services. We shall later pay special attention to his support for a guaranteed income floor as the best example of a public policy recommendation of the limited welfare state. But let us first look at Hayek's general recommendations.

We have seen that Adam Smith allowed for a wide range of public actions, as long as they complied with certain limitations. Ultimately, public actions should *facilitate* the commercial society and the free market society rather than trying to *control* it. The classical liberal tradition is a balancing act between respect for private property and limited government and the obvious need for an institutional framework of laws.

As Hayek explains about his own position: "Only the coercive measures of government need be strictly limited. [However,] there is undeniably a wide field for non-coercive activities of government and there is a clear need for financing them by taxation. Indeed, no government in modern times has ever confined itself to the 'individualist minimum'." (CoL: 374)

In fact, in *The Constitution of Liberty*, on pages 332-333 alone, Hayek lists no less than *eleven* particular "services" that the government, under the rule of law, may legitimately and fruitfully undertake – in addition to the pure libertarian framework – without infringing the liberties of its citizens. The list is not intended to be comprehensive, but merely suggestive. "A great many of the activities which governments have universally undertaken in this field [...] fall within the limits described" (332). Indeed, "there are fields in which the desirability of government action can hardly be questioned" because such action can "assist the spontaneous forces of the economy" (331); wherever "there is no violation of principle" of the rule of law

(332). So, according to Hayek – in a list reminiscent of Adam Smith and the early classical liberals – acceptable government actions include, but are not limited to:

- 1) the acquisition of reliable knowledge;
- 2) the provision of the monetary system;
- 3) the setting of standards of weights and measurements;
- 4) gathering information from surveying, land registration, statistics, etc.;
- 5) supporting (and perhaps organizing) some kind of education;
- 6) sanitary and health services;
- 7) the construction and maintenance of roads;
- 8) municipal amenities;
- 9) public works (à la Adam Smith);
- 10) secret military preparations;
- 11) the advancement of knowledge;

These services, in general, are aimed to "assist the spontaneous orders of the economy." (331) Their utilitarian justifications can be divided into two camps. The services (1)-(5) are useful for a market society because they increase the information freely available to individuals: "All these activities of government are part of its effort to provide a favourable framework for individual decision; they supply means which individuals can use for their own purposes." (332) The services (6)-(11), on the other hand, "are clearly desirable, but [...] will not be provided by competitive enterprise because it would be either impossible or difficult to charge the individual beneficiary for them." (332-333) Thus, all those services, (1)-(11), should be provided for by the state.

Quite a list for an avowed enemy of "social justice"! If advocating for such public goods makes someone a social democrat, then Hayek, too, is a social democrat, just like Adam Smith before him. But this, of course, would be a false impression. Smith and Hayek were *not* social democrats, but classical liberals who believed in a consequentialist defence of the Three Principles: 1) Private property, 2) Limited government; 3) And, within these limits, the provision of some public goods.

Hayek "was not, contrary to what many people imagine, opposed to the welfare state as such. He acknowledged that 'there are common needs that can be satisfied only by collective action' [Hayek: 374] [...]. Nor was he opposed in principle to government regulation of working conditions, building codes, and so on. Hayek's criticism of

proposals for the welfare state lay not so much with the aims as with the methods of government action.” (Muller: 205) He wanted to limit the sphere of government (Principle 2) and to protect the private sphere (Principle 1). For this end, he opposed extending government powers too far, and in curtailing the private sphere too far. These two are interrelated concerns (just like Principle 1 and 2 are, as I have shown many times before, interrelated principles). Governments must fall within these limits. Like Smith, he was mostly concerned with eliminating all the monopolistic, bureaucratic and market-inhibiting functions of the government that threatened to overtake and destroy the spontaneous order of the market.

Thus, if the government wished to provide, say, health services for the elderly, it ought to do so in a way that was compatible with a free market society. There is a wide range of (non-monopolistic) public services that Hayek approves of, or at least tolerates, in a free society: in addition to the list mentioned earlier, he supported e.g. anti-discrimination laws (CoL: 203); child protection (CoL: 499); and funding for higher education and scientific research (CoL: 505). In both CoL and LLL the government he outlines has a rather active role in providing for many public goods and functions.

*Why*, though, should the state provide all these things? Beyond the general consequentialist aims of trying to foster a framework of good laws compatible with a commercial society, Hayek doesn't have a single, dominant answer. His arguments often seem almost *ad hoc*, as Tomasi (2012: 47) points out. However, it should be realized that his method is more *eliminative* than *productive*. He is trying to determine which state actions are *inadmissible*, and not which actions are *admissible*. Like a good liberal, he is trying to set “chain the Leviathan.” His aim is to determine the *limits* that the welfare state ought to respect: “my whole effort was to distinguish between legitimate and illegitimate action.” (Hayek on Hayek: 123)

As he writes, “it is the *character* rather than the *volume* of government activity that is important. A functioning market economy presupposes certain activities on the part of the state; there are some other such activities by which its functioning will be assisted; and it can tolerate many more, provided that they are of the kind which are compatible with a functioning market.” (CoL: 331, my emphasis) Hayek does not oppose the welfare state as such. He actively encourages many government functions and tolerates

even more. Even an extensive welfare state might be permissible *if* it operates within the parameters of “assist[ing] the spontaneous forces of the economy.” (CoL: 331)

So his project, in CoL and LLL, is primarily *negative*: of determining what the state should *not* do. However, there is at least one strong *positive* argument: the argument in favour of the correction of market failures. Thus, although the negative approach is mostly concerned with *reducing* the harm that government may do (by its methods), the positive approach is concerned with *increasing* the overall efficiency of the “system of natural liberty” (WoN: 560). The government's role can be beneficial.

The benefit of a government provision of certain services is that it corrects a persistent market failure: the underproduction of public goods. For when an individual “knows that compulsion can be applied only if it is applied to all including himself, *it will be rational for him to agree to be compelled*, provided this compulsion is also applied to others.” (LLL: 385, my emphasis)

Hayek's argument, borrowed from neoclassical economics, is that the government, in providing a public good, improves the efficiency and utility of the economy.

Technically speaking, the unregulated market can lead to a Pareto-suboptimal distribution - underproduction and underconsumption - of certain goods (“public goods”) that have large positive externalities that benefit everybody equally. And since the overall social consequences of those positive externalities can be quite large, there is a good reason to extend the powers of the government to tax and fund such a program. Hayek, as a consequentialist, is open-minded about such issues. His concern is always to look at the large-scale rules of the society. He understands that the market society might benefit from certain limited collective actions. It is only necessary that such government programs *fall within the boundaries of certain liberal principles*.

These boundaries are familiar from Adam Smith. For example, “the fact that some services must be financed by compulsory levies by no means implies that such services should also be administered by government.” It's better to use “competitive enterprise” and “the spontaneous mechanism of the market” to find optimal solutions to their production. This implies a strong ban on government monopolies, and the active advancement of citizen and consumer choice. (LLL: 386-387)

But the fundamental point is that there is nothing particularly wrong with the government using its powers to provide a limited range of public goods and other collective actions, since it is “rational ... to agree to be compelled” (LLL: 385) to a framework of laws that is to the benefit of practically everybody. So, the rationalist justifications work together with the utilitarian-consequentialist ones.

#### 5.4 Additional Arguments for Redistribution

Hayek's argument – that it is “rational ... to agree to be compelled” (LLL: 385) is similar to the arguments that Locke made in favour of private property. As I have shown, private property, in reducing the overall level of coercion in society, makes it rational for everybody to agree to be compelled by its limits. And likewise with the laws of the state: a coercive government whose coercive powers are limited to minimizing private coercion (aside from the production of the limited range of welfare functions justified under Principle 3) helps to *decrease* the amount of coercion and suffering in the society. It is thus rational for everybody to agree to be compelled by its limits.

Thus we have a chain of rational arguments in favour of the Three Principles:

1. **Private property** is a rational solution to the problem of peaceful and prosperous coexistence in an advanced society<sup>22</sup>.
2. **The limited government** is a rational solution to the problem of how to ensure that Principle (1) is enforced.
3. **The limited welfare state** is a rational solution to the problem of how to enable the government to make Pareto-improvements: e.g. to prevent that public goods are systematically underproduced by the market [*without* violating Principles (1) and (2)].

Let us recap the arguments in favour of the Three Principles. Classical liberals have argued for the limited welfare state from a multitude of directions. They have all agreed that any welfare functions need to respect principles (1) and (2) of liberalism. Some,

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<sup>22</sup> The longer version: We need to respect private property (under a limited government) because it enables a peaceful and prosperous coexistence, which enables the best use of the productive resources of the society, which makes it possible for the welfare level of the society to advance to new heights.

like Adam Smith and Friedrich Hayek, have argued for the limited production of certain public goods and market-improving institutions from an *economic efficiency* perspective. Others, like John Locke and Henry George, have also argued from the perspective of *fair compensation*. The latter argue either that a) private property and land-ownership leave some people worse off, or that b) while they might benefit *everybody*, they nonetheless might benefit some people *disproportionately*.

Thomas Paine, in *Agrarian Justice*, argued that “[e]very individual in the world is born therein with legitimate claims on a certain kind of property, or its equivalent.” (article i05) From this basis he argues that property should be taxed and shared, as Basic Income, to all citizens of the society. (For Basic Income, see next chapter.) Locke argued in terms of Charity that can be interpreted to demand the same. (TTG: I, §42)

Let us call this the *Locke-Paine argument in favour of fair compensation* of the monopoly privileges of private property and land ownership:

1. Private property benefits everybody.
2. But, it grants disproportionate utility to property owners over non-owners.
3. Thus we need to *both* defend private property *and* to compensate non-owners.
4. Thus we need a limited welfare state (with limited redistributive capacities).

Hardcore rights-based libertarians deny the importance of such consequentialist arguments as (1). They also wish to deny (2), since they consider private property a natural right and definitely not a privilege. Consequently, they thus deny arguments (3) and (4) for the limited welfare state. Consequentialist hardcore libertarians, on the other hand, usually have to argue that (2) and (3) do not follow from (1). But many bleeding-heart libertarian, and practically all classical liberals, accept *some* form of the above argument. The Lockean proviso (TTG: §27) is an example of it; as is the Smithean argument about the malign effects of factory work on the workers. (WoN: 603)

With these two arguments, we now have a classical liberal defence of the limited welfare state. The first argument we can call the *neoclassical / public goods* argument. The second argument let's call the *Lockean / fair compensation* argument. They are hardly exhaustive, but together they provide a good *prima facie* case for a limited

welfare state. They both suggest that a limited welfare state might be a Pareto-improvement for the society. Combining them all, we have a good consequentialist basis for going *slightly* beyond the minimal state and the libertarian paradigm.

In the next chapter we shall see that the best application, so far developed, of a Lockean-Smithean-Hayekian welfare state function, and one that best satisfies *all* Three Principles of liberalism, is the unconditional Basic Income Guarantee (BIG).

## **6. Theory into Practice: The Basic Income Guarantee**

The Basic Income Guarantee (BIG), aka. guaranteed minimum income, is a proposal to replace the current welfare state<sup>23</sup>, or a significant portion of it, with an unconditional cash granted given to all citizens once a month, irrespective of their age, need, occupation, gender, wealth and status. It would be given to all citizens as a matter of right. BIG has been defended by many classical liberals (Paine 1797; Friedman 1962; Buchanan 1997) as well as by many non-liberal and socialist thinkers. In this chapter, I will argue that it solves the problem of combining welfare with a market economy under a limited government. It thus fits the utopia of the *limited welfare state*.

Constitutionally enshrined BIG forms a part of the basic framework of the security apparatus of the society. It cannot be denied to any citizen, nor is anybody given more. Thus it implements the third principle of liberalism in an equal way to everybody. Since it leaves it up to the individuals how they wish to spend the money, it respects the libertarian "self-ownership" core of liberalism. Since it supports the efforts of individuals to improve their own lives in the job market, by providing (uncoerced) incentives for low wage-earners, it supports the market economy. Since it does not dictate to people how they should use the money, it allows for non-patterned outcomes. Since it eliminates political privileges to special groups, it reduces rent-seeking in society. And since it supports individual responsibility and entrepreneurial risk-taking, due to the added security and stability it provides, it supports wealth production in the market economy. It enhances the utilitarian aims of the market democratic society.

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23 E.g. Charles Murray (2006), a libertarian conservative, has proposed it as a way to replace the *entire* welfare state infrastructure of targeted redistributive programs with a single, non-bureaucratic alternative.

Thus it represents an improvement over competing welfare proposals. This suggests that *the limited welfare state should incorporate a BIG*.

Liberal arguments for the BIG have been put forward in the book *Basic Income and the Free Market* (ed. Nell, 2013). It shows that Hayek, Buchanan and Friedman (all of whom we shall look at below) offer a defence of BIG as market-friendly welfare. The central conclusion of the book is that "a nonintrusive redistribution like the BIG might actually represent an improvement upon pure laissez-faire." (3) Optimal free markets might need a bit of state intervention, but within strict limits. This, as I have shown with from Smith and Tomasi, is the typical position of classical liberalism. They consider a combination of substantially free markets and a robust system of governance to be an improvement over *both* laissez-faire libertarianism and socialist planning.

The BIG can be supported, and has been supported, from many different perspectives. Let us start by analysing Hayek's defence of the guaranteed minimum income.

### **6.1 Hayek's Proposal: "Minimum Income for Everyone"<sup>24</sup>**

Hayek has argued for a minimum income floor in practically all his writings (1944; 1960; 1982). We already encountered it in our discussion of his general theory.

In *The Road to Serfdom* (1944), that famous tractate written against the anti-liberal welfare state, Hayek argues that a liberal society should have a program against poverty: "There is no reason why in a society which has reached the general level of wealth which ours has attained the [...] security [of a minimum income] should not be guaranteed to all without endangering general freedom." (RtS: 148)

But guaranteeing the absolute minimum floor is as far as it goes, according to Hayek: "any further provision [beyond the limited welfare provision] required for the maintenance of the accustomed standard should be left to competitive and voluntary efforts." (CoL: 426) The redistributive power of the welfare state is strictly limited.

He never changed his mind on the desirability, or at least the acceptability, of such a

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<sup>24</sup> LLL: 55.



scheme. And he always argued for it in the same terms, on the basis of compatibility with the general framework of liberal laws. A defence of a kind of a uniform “minimum income” appears in his very early works as well as in all his later major works.

In his magnum opus, *The Constitution of Liberty* (1960), he writes: ”We shall again take for granted the availability of a system of public relief which provides a uniform minimum for all instances of proved need, so that no member of the community need be in want of food or shelter.” (CoL: 424)

And, decades later, in *Law, Legislation and Liberty* (1982): "The assurance of a certain minimum income for everyone, or a sort of floor below which nobody need fall even when he is unable to provide for himself, appears not only to be wholly legitimate protection against a risk common to all, but a necessary part of the Great Society in which the individual no longer has specific claims on the members of the particular small group into which he was born." (LLL: 55)

Hayek's arguments can be used to justify a guaranteed minimum income of the sort that the Basic Income Guarantee might introduce. The most persuasive argument that a BIG would be the best solution to Hayek's welfarism is the following quotation:

“The basic conception of classical liberalism, which alone can make decent and impartial government possible, is that government must *regard* all people as equal, however unequal they may in fact be, and that in whatever manner the government restrains (or assists) the action of one, so it must, under the same abstract rules, restraint (or assist) the actions of all others. Nobody has special claims on government because he is either rich or poor, beyond the assurance of protection against all violence from anybody and the assurance of a certain flat minimum income if things go wholly wrong.” (Hayek, LLL: 143)

The above quotation emphasizes the following points:

- 1) **That government regard all people as equal, however unequal they may in fact be;**
- 2) **That government assistance be universal in the sense of applying to all citizens;**

- 3) **That government provide protection both in the sense of laws and social welfare;**
- 4) **That a “flat minimum income” is the best form of social welfare;**
- 5) **That beyond the assurance of such protection, nobody can have special claims.**

I will argue that such a framework is a perfect justification for the BIG.

The danger in extending redistributive policies beyond such a minimum are profound, according to Hayek. Even if we could justify more extensive redistributive measures in the name of social justice – which Hayek thinks we *cannot* do (See LLL: 169-341) – their implementation would probably end up doing a great deal of harm:

”Though we may have speeded up a little the conquest of want, disease, ignorance, squalor, and idleness, we may in the future do worse even in that struggle when the chief dangers will come from inflation, paralysing taxation, coercive labor unions, an ever increasing dominance of government in education, and a social service bureaucracy with far-reaching arbitrary powers – dangers from which the individual cannot escape by his own efforts and which the momentum of the overextended machinery of government is likely to increase rather than mitigate.” (CoL: 429)

Thus, going beyond the legitimate limits of government, and extending the use of its coercive powers too far, will lead to bad results. ”It is indeed probably that more harm and misery have been caused by men determined to use coercion to stamp out a moral evil than by men intent on doing evil.” (CoL: 213) This is a powerful consequentialist argument against expanding government power in its welfare functions.

Such considerations justify a limited welfare state. Liberalism, as the doctrine of limits, is concerned with finding both the *upper* limit to government action (how much is too much) and also the *lower* limit to government action (how much is too little). While it offers a (slightly-)more-than-minimal, classical liberal example of welfare, the Hayekian programme *cannot* be used to defend a more-than-limited, social-democratic threshold of welfare. The Three Principles of liberalism provide the guidelines within which such limits can be ascertained. Classical liberalism, in its search for the limits of government (i.e. my Three Principles), has always argued for *limited* social welfare.

Hayek never wavered from his defence of the guaranteed minimum income: "I have always said that I am in favor of a minimum income for every person in the country." (Hayek on Hayek: 114) He never quite articulated clearly *why* he thought that "the case for the state's helping to organize a comprehensive system of social insurance is very strong." (RtS: 148) But he thought that as long as the principles of liberty and limited government are respected, "there is no incompatibility in principle between the state's providing greater security this way and the preservation of individual freedom." (*ibid.*) As usual, Hayek's focus is on the macro-scale structures and rules of the society.

The boundary conditions – the limits of the welfare state – are the following:

- 1) The level of the minimum income must be sufficiently low to be affordable.
- 2) But the level must be sufficiently high to secure against extreme deprivations.

Within these limits Hayek fully supports the minimum income guarantee of some kind.

However, before we say that the Hayekian system is a good justification for the Basic Income Guarantee, we need to overcome one obstacle. Namely, that Hayek himself seems to have favoured a means-tested, rather than universal, benefit system.

He argued that "that this minimum is provided only on proof of need and that nothing which is not paid for by personal contribution is given without such proof." (CoL: 427) Hayek talks of the "wholly irrational objection to a 'means test'" (*ibid.*) even though it is precisely the means-tested welfare programs which have entailed a massive increase in the discretionary powers of the today's welfare state.

Hayek acknowledged that this flatly contradicts his opposition to discretionary powers. But he argues that people on the benefits lose their right to complain: "the objection against discretionary coercion can really provide no justification for allowing any responsible person an unconditional claim to assistance and the right to be the ultimate judge of his own needs. There can be no principle of justice in a free society that confers a right to 'non-deterrent' or 'non-discretionary' support irrespective of proven need." (CoL: 428)

So, his arguments for discretionary welfare bureaucracy run counter to his own principles, but he thinks – probably falsely – that they are necessary for the system. (And they probably would be, if the system was something else than a BIG.)

But Hayek's own arguments in favour of “abstract and general rules” (CoL: 209) speak in favour of BIG, instead. It falls within the parameters of a good Hayekian law, which he laid out as follows: “Law in its ideal form might be described as a “once-and-for-all” command that is directed to unknown people and that is abstracted from all particular circumstances of time and place and refers only to such conditions as may occur anywhere and at any time.” (CoL: 218) This is a perfect description of a BIG.

I want to argue that, despite Hayek's own scattered thoughts on the subject, the best solution to the problem of welfare is *not* a means-tested system, which only tends to multiply the sort of bureaucratic power of the welfare state that Hayek elsewhere opposes, but a full basic income guarantee. It remains true that Hayek never argued explicitly in favour of a BIG. However, Hayek never argued *against* a Basic Income Guarantee, either. It seems that he never developed the details of the program.

He provided the general principles. It is incumbent on his readers to make their own interpretations. It is my interpretation<sup>25</sup> that the BIG is almost a perfect match to Hayek's emphasis on a “guaranteed minimum income” implemented in the form of a “once-and-for-all” command that is directed to unknown people and that is abstracted from all particular circumstances of time and place.” (CoL: 218)

To further explain why a BIG is a good solution from the standpoint of classical liberalism, let us turn to Milton Friedman's proposal: the negative income tax.

## **6.2 Milton Friedman's Proposal**

The Negative Income Tax (NIT) is a version of the Basic Income Guarantee.<sup>26</sup> It was

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<sup>25</sup> See also: Theodore Burczak: “A Hayekian Case for Basic Income” (2013).

<sup>26</sup> The technical details are not important from a philosophical standpoint. We can take the NIT and BIG to be practically equivalent. They are also very similar from the perspective of economics.

made famous my Milton Friedman, who is one of the most important classical liberals of the 20<sup>th</sup> Century. In Chapter XII of his *Capitalism and Freedom* (1962), Friedman writes: "It can be argued that private charity is insufficient [. ...] To put it differently, we might all of us be willing to contribute to the relief of poverty, provided everyone else did. [...] In the large impersonal communities that are increasingly coming to dominate our society, it is much more difficult" to rely on private charity. (157) He accepts "this line of reasoning as justifying governmental action to alleviate poverty; to set, as it were, a floor under the standard of life of every person in the community." (*ibid.*)

- 1) Private charity (read: voluntary action under Principle 1) is insufficient.
- 2) Government intervention (Principle 3) helps correct market inadequacies.

He is also a consequentialist defender of the free market. Although he defends certain public interventions, like NIT/BIG, as Pareto-improvements, he also thinks, like Smith, that Principles 1 and 2 of liberalism – private property rights and limits on government power - are even *more important* for the welfare of the people than Principle 3. Thus he would never support a welfare program that would destroy, or negate, the free market.

He makes two further arguments in favour of a NIT/BIG over competing proposals:

"First, if the objective is to alleviate poverty, we should have a program directed at helping the poor. There is every reason to help the poor man who happens to be a farmer, *not because he is a farmer but because he is poor.*" (*ibid.*, my emphasis)

The BIG is the preferred liberal solution, because it applies to *all the people of the society* rather than the desires of rent-seeking special interests. Aside from entailing taxation, it also respects the limits of private property and free market exchange:

"Second, so far as possible the program should, while operating through the market, not distort the market or impede its functioning." (158)

This (rather Smithean) proviso is a direct attack on many forms of bureaucracy – "price supports, minimum-wage laws, tariffs and the like" (*ibid.*) - that have been implemented in a welfare state. Such proposals reduce economic freedom.

The Basic Income Guarantee / Negative Income Tax, he argues, is the only solution that fulfils these two criteria: "The advantages of this arrangement are clear. It is directed specifically at the problem of poverty. It gives help in the form most useful to the individual, namely, cash. It is general and could be substituted for the host of special measures now in effect. It makes explicit the cost borne by society. It operates outside the market." (158) These are all important elements of the limited welfare state.

Of course, Friedman does not argue in a vacuum. He is arguing in a situation where the government is already heavily invested in providing welfare benefits to poor people. He is not arguing for the *introduction* of something that doesn't exist. He is arguing for the *replacement* of many existing programs with a single market-friendly and freedom-friendly alternative. Friedman's proposal, in effect, consists in the *limitation* of the powers of the government in the welfare sector. Unlike Van Parijs (1995), for example, he is not arguing for the Basic Income from a *human right* perspective.

The precise method of implementation is a matter of politics rather than philosophy. But if we want to implement a limited welfare state without losing touch with, or having to get rid, of the libertarian core, we need something like a BIG or a NIT.

### 6.3 James Buchanan's Proposal

James Buchanan, who explored classical liberalism in his book *Limits of Liberty* (1975) - which we have quoted a few times - has elsewhere (1997) argued in defence of the third principle of liberalism.

His solution shouldn't surprise us. As a classical liberal, he sees the BIG as the best means that a democratic society can provide for the welfare of its citizens. He calls his proposal the "demogrant" which, like Friedman's NIT, is simply another name for BIG.

He argues that "a structure of equal per head transfer payments, or demogrant, financed by a flat rate of tax in all incomes, if effectively constitutionalized and removed from the agenda of ordinary majoritarian politics, would allow an affirmative answer, of sorts, to the question 'Can democracy promote the general welfare?' Legislative majorities would be empowered to set [...] the size of the demogrant, but

specific actions aimed at discriminating favourably or unfavourably [...] would be out of bounds". (1997: 171-2) Buchanan's focus is in limiting majority power and increasing constitutionality, and thus legitimizing democracy in a new way.

Such a system would increase public trust: "The expressed public dissatisfaction with the modern welfare state may be traced, in part, to the failure to keep transfer programs within the limits of generality that [...] promote the general welfare." (1997: 179).

In such a system, the "democratic process [...] is not allowed to degenerate into the cross-group redistributive transfer absurdity that describes" existing welfare democracies (1997: 172). It is thus a mechanism of keeping democracy within strict limits: the limited government (Principle 2). The limits are set by the constitution, which protects freedom from coercion (Principle 1). The BIG is the limited welfare principle (Principle 3) enacted in the constitutional framework of a liberal society.

Buchanan is just the last in a long line of classical liberal thinkers who have argued for the BIG. The popularity of the BIG is no accident. The argument, from Hayek and Friedman to Buchanan, is clear: since an intrusive and expansive welfare state, with wide powers of coercion, would threaten to destroy individual freedom, it is important to formulate such a welfare redistribution mechanism, such as BIG, which avoids all these problems, and which might, in fact, help to reduce the size of the government – but without sacrificing the capacity of the society to provide welfare for everybody.

Before closing the chapter, let us quickly take a look at the work of the most important philosopher of the basic income guarantee, Philippe van Parijs. His proposal is not exactly classical liberal, but social liberal – which makes it even more interesting.

#### **6.4 Philippe van Parijs's (Rawlsian) Proposal**

In *Real Freedom for All: What (if Anything) Can Justify Capitalism?* (1995), philosopher Philippe van Parijs provides a Rawlsian, “real-libertarian”, case for BIG. Such a social liberal framework shares many similarities with classical liberalism.

It would be fruitful to compare the Hayekian market welfare society with a social liberal welfare society in Rawlsian lines. We can only take the first steps in that direction here through van Parijs's work. He is also perhaps the most important living proponent of the BIG, so it will benefit us greatly to study his proposal carefully.

Van Parijs draws heavily from the classical liberal definition, broadly defined, because he accepts the importance of liberty as the supreme value of organizing society. For example, he writes: "[J]ustice is about the distribution of freedom, not about the distribution of happiness." (59) He calls his system "real-libertarianism", which demands an equal distribution of "real" opportunities. But he is also definitely a social liberal: "I like Rawls a lot and often have the feeling that, deep down, he's got it all right." (90)

Van Parijs argues that Rawls's difference principle recommends itself, contrary to Rawls's own preferences (for a conditional programme similar to Hayek's), to a fully unconditional basic income solution: "Rawls's position and in particular his Difference Principle appear to recommend – subject to the respect of fundamental liberties and of fair equality of opportunity – that one should introduce a wealth-distributing, power-conferring, self-respect-preserving unconditional basic income, indeed that one should introduce such an income at the highest sustainable level." (95-96)

For van Parijs, Rawls's difference principle serves a similar function that Hayek's "minimum income"-principle (CoL: 424) does for me: it provides an argument for a liberal welfare program in the style of the Basic Income Guarantee. This suggests that under certain reading of Rawls and Hayek, similar outcomes can be reached. It shouldn't surprise us, either, since the social liberal traditions of Rawls and Hayek share many similar elements (see Tomasi: 226). Hayek knew this, too. Despite his opposition to "social justice", Hayek even makes a few positive remarks about Rawls (LLL: 261).

The classical liberals would also agree with Parijs's statement "that people should be held responsible for their choices (and indeed for their preferences), that justice is about equal [...] possibilities, and that the mess or wonders people make of these possibilities do not need to be corrected." (Parijs: 169) The emphasis is on rules of the game, and the long-term overall effects, not the inequalities or anecdotal losers that it creates.



As a faithful Rawlsian, Van Parijs argues that economic freedom and the resulting inequality can be justified only if the least-well-off are thus better off. This is not a completely dissimilar argument, either. We shall remember that Locke and Smith argued for private property as a means of helping the poor, too. These arguments are similar, but not identical: the classical view allows for more resulting inequalities.

Like Hayek's classical liberalism, Van Parijs's social liberalism exhibits an unabashed "presumption in favour of optimal capitalism" over any conceivable kind of socialism (189). This leads to a rather "negative conclusion about socialism" (190). But it is still compatible, according to its author, with some aspects/versions of libertarian socialism, unlike Hayek's system. Nonetheless, Van Parijs's real-libertarian utopian society is best understood as "a form of capitalism that incorporates a basic income, supplementary targeted transfers, predictable taxation, and environmental protection" (210). This description could also apply to some conceivable bleeding-heart libertarian society.

Perhaps I could sum up: classical liberalism places more emphasis on libertarianism; social liberalism on egalitarianism. The core is the same. Let me quote Van Parijs:

"What is, then, a free society? It is a society whose members are all really free – or rather, as really free as possible. More precisely, it is a society that satisfies the following three conditions:

1. There is some well enforced structure of rights (*security*).
2. This structure is such that each person owns herself (*self-ownership*)
3. This structure is such that each person has the greatest possible opportunity to do whatever she might want to do (*leximin opportunity*)". (25)

Despite the odd Rawlsian phrase ("leximin"), such a framework sounds very similar.

All we need to state is that the different traditions, here, converge on a single point: a "cash grant – a guaranteed minimum income of purchasing power – is favoured from a real-libertarian (and, let me add, also a market liberal) perspective" (41).

Since Van Parijs derives very heavily from Rawlsianism, we can surmise that (some forms of) Rawlsian social liberalism would not look that different from (some forms of) market liberalism. The precise differences and similarities between Rawls and Hayek unfortunately cannot be developed further now, since our focus is elsewhere.

The Parijsian state meets the "requirements of formal freedom [:] Police, courts, an effective military or civil defence against external threats, adequate mechanism for collective decision-making at the various territorial levels." This is the libertarian core of liberalism. These are necessary because, like classical liberalism, "[r]eal-freedom-for-all consists in [increasing] people's opportunities on the background of a well-enforced structure of self-ownership-protecting rights." (43) (Principle 1)

The Parijsian welfare state is also a form of *limited* welfare state, quite similar to Hayek and Smith. All these thinkers agree on the *general principle* that the state has a role in providing for public goods such as education, infrastructure, clean air, public highways and public parks. (Principle 3) He thinks that there is probably no need for the state to pay for university education, sports facilities and opera tickets. He is open, however, to the idea that the state provide "compulsory basic health insurance" and a few other "mild form[s] of paternalism" (45). But that is about it. Van Parijs wishes to limit the state - *even* in its welfare functions. (Principles 2 & 3)

Such a scheme, he claims, is a "fair way of distributing external-resource-based real freedom [where] people's endowments [are] valued in terms of competitive prices." (54) His welfare scheme is a form of Pareto-optimizing, opportunity-maximizing, equality-increasing Rawlsian liberalism.

Although he accepts self-ownership and a *mostly* free market, Philippe van Parijs also argues against a literal reading of the first two (libertarian) principles of liberalism. Even a perfectly competitive market "needs to be supplemented with a fair distribution of opportunities." (169) The libertarian core needs to be supplemented by the welfare principle that goes beyond Hayek.

Neither Rawls or Hayek were in favour of an unconditional BIG, but their arguments have led many of their readers to draw the – I think correct – conclusion that a BIG is

the best answer to the fundamental welfare liberal principles that they expounded.

The importance of the BIG is that it is compatible with a classical liberal society. It fulfils the boundary conditions (limits) that people like Hayek, Buchanan and Friedman have placed for any liberal welfare program. And it can even be justified on Rawlsian, social liberal, grounds, as Van Parijs shows. Most importantly, it provides a practical application of the bleeding-heart libertarian welfare principle (Principle 3).

I have now reached the end of my analysis of the limited welfare state. It is a society in which the state does not “forbid capitalist acts between consenting adults” (Nozick: 163), but in which a Basic Income is guaranteed to all as an automatic safety net.

Now is the time to gather my thoughts. Let me start by exploring some of the problems that remain. These are matters that deserve further study, which cannot be given here.

## **7. Open Problems for Further Research**

### *1. The relationship to the social liberal tradition*

From the outset, I chose not to directly engage with Rawls and other important social liberals. This was by design, since I decided to focus on market liberty. Rawlsianism is a powerful paradigm that deserves an equally powerful competitor from bleeding-heart libertarianism. However, it becomes clear that the Rawlsian focus on "basic liberties" and the "difference principle" seems to be somewhat similar to the Three Principles of the classical liberal paradigm. We have also seen that Philippe van Parijs, who is a follower of the Rawlsian paradigm, ends up defending a framework of society that is pretty close to the framework of society we have advocated under the classical liberal paradigm. But we have also seen that there are differences in the way these two traditions draw the boundaries of the welfare state. However, these are only preliminary sketches, and any further comparisons will need to be made elsewhere.

### *2. The hardcore libertarian challenge*

We have argued that the hardcore libertarian interpretation of classical liberalism is not sufficient for a good society. However, we have not quite proved the point. We have, at most, showed that the Nozickean arguments for absolute or unlimited property rights are not satisfactory. Nozick fails to prove that the minimal state is the most extensive state that can be justified. But there is a wide range of in-depth arguments, from Spencer to Rothbard, that would need further analysis. The hardcore libertarian challenge remains a strong contender with the classical liberal paradigm - especially because bleeding-heart libertarianism seems much “messier” (Tomasi: 49) in comparison. There is a powerful lure in the logical simplicity and *elegance* of the hardcore libertarian arguments, which, however, I think we should resist on consequentialist grounds; and also because their foundations are weak. They do not lead to a satisfying utopia, although they probably make for beautiful theories.

### *3. The ultimate justifications of the liberal principles: rights or consequences?*

It is surely a failure of the liberal tradition that it has failed to deliver a coherent, systematic defence of the Three Principles. Different thinkers approached the moral foundations of property rights and the legitimacy of government in different ways, and they all provide different arguments for or against government intervention in particular areas. (See Tomasi: 47) The libertarians provided a systematic account of property rights and economic freedom that satisfied those who wanted a logically coherent theory based on axiomatic first principles. The most we can say for the liberal approach is that it seems to provide a good blueprint for a pluralistic, prosperous and progressive society, using a combination of consequentialist and rights-based arguments. Its negative freedom approach places limits on the coercion that individuals may do to one another (property rights), and limits on the coercion that governments may do to citizens (limited government), while, within these limits, providing a limited range of public institutions, regulations and welfare policies (the limited welfare state). However, perhaps the quest for ultimate foundations is a bit futile? I have, at least, offered the consequentialist approach as the most plausible and coherent vision.

### *4. The question of the limits of government powers: How to tame the "Leviathan"?*

We have seen that the second principle of liberalism aims to limit government. However, we have also seen that, from Locke and Smith to Hayek and Tomasi, the precise limits of government power are hard to decipher. How much regulation is permitted? What counts as a "public good"? When is majoritarian democracy allowed to trump individual choice? The third principle and the second principle often seem to undercut the first principle (libertarianism). These questions are so immense that they cannot be satisfactorily answered by a recourse to the Three Principles alone.

## **8. Conclusions: Liberty and Welfare**

We have seen that classical liberalism converges on the the Three Principles:

“[C]lassical liberalism, in its traditional formulation, affirms a thick conception of economic liberty and a formal conception of equality. That conception nonetheless allows the state to impose taxes to support a limited range of social services that the market might not otherwise make available to all citizens.”

(Tomasi: 47)

Classical liberalism, from Locke to Hayek, has argued that government needs to be limited in its power to legislate over individuals, even in the economic realm. The consequentialist arguments for a limited government have proven themselves firm.

In reforming the welfare state, we should recapture, and reinterpret, the classical liberal notion of limiting government. However, the mere fact that government should be limited, and private choice should be respected, does *not* mean that the nature of those limits is simple and obvious. Liberals have differed amongst themselves as to the precise nature and extent of those limits. For example, they have differed amongst themselves as to whether any functions currently associated with a "welfare state" can be justified (and if so, to what extent?) in the context of a limited government.

A wide range of opinions and arguments have existed within the Lockean-Smithean legacy as to the *precise limits of state power*, and this paradigm has only been expanded by the later additions, modifications and deviations. Nozick's theory, by contrast, is

presented as an elegant logical deduction from a set of natural property rights. But we should not be fooled by its seeming rationality. The notion of absolute property rights betrays a lack of foundations even more profound than that of the more eclectic classical liberalism. Lockean rights do not make sense without the modifiers of the Proviso(s), of Charity, and of Democracy. Thus the original Locke is better, if fuzzier.

I have argued that *welfare without freedom* is as unjust as *freedom without welfare*. The central message of the earlier classical liberals, as distinct from the hardcore libertarians and welfare liberals, remains fundamentally important for today. We can interpret classical liberalism as *simultaneously* a **criticism** of "really-existing" welfare state ideology – with its expansive bureaucracy, paternalistic legislation and special interest politics – but also a **defence** of a "utopian" *limited welfare state*.

With the following words, Locke justified the institution of private property:

“God gave the world to men in common; *but since he gave it them for their benefit...*” (TTG: §34, my emphasis)

Without the boundaries, limit, side-constraints, between individuals' private spheres, the world would remain a barren wasteland – or, at least, hugely underdeveloped. People like Smith and Hayek concur. I have tried to defend this approach, and to highlight the benefits that accrue from instituting fixed *limits*, not only to property in the strictest sense, but to all coercive action, including by the state. Thus Principles 1 and 2 – private property and limited government - are justified on consequentialist grounds.

Hayek and Smith offered similar arguments in defence of the doctrine of the limits. I have tried to show that these, while rudimentary and fragmented, are a good enough basis for taking the “libertarian core” of classical liberalism seriously as a necessary condition of any welfare-maximizing, Pareto-optimizing, society. The fixed rules of property and liberty allow for beneficial long-term “public utility” (Hume: §276).

The various consequentialist arguments, from the same thinkers, complement the system, and justify a limited range of public goods and a Basic Income Guarantee. They also preclude the welfare state from expanding beyond these limits: the limited

welfare state firmly opposes all "absolute, arbitrary, unlimited, and unlimitable power over the lives, liberties, and estates" of individuals. (TTG: I, §9) The society that emerges from this is a bleeding-heart utopia, where the Three Principles of Classical Liberalism are instituted, guarded and developed, under the rule of law.

A philosophical defence of such a society cannot, of course, offer any details of its implementation, beyond prescribing certain boundary conditions and limits (on the basis of Smithean and Hayekian suggestions) that cannot be crossed. There remain many unanswered questions but the overall picture is, at least, coherent.

Here is a summary of the differences between the "Three Principles"- and the "Two Principles"-schools – i.e. the bleeding-heart and hardcore libertarians, respectively:

A) The open-minded classical liberals (bleeding-heart libertarians):

Examples: Locke, Smith, Hayek, Friedman, Buchanan, Tomasi.

Principles: Strong property rights, limited government, some public goods.

Justification: Mostly consequentialist, with some rights-based elements.

B) The stringent classical liberals (hardcore libertarians):

Examples: Spencer, Bastiat, Nozick, Narveson, Rothbard.

Principles: Absolute property rights, minimal government, NO public goods.

Justification: Mostly rights-based, with some consequentialist elements.

I have defended the Three Principles of liberalism on consequentialist grounds. It is the more promising alternative. The bleeding-heart libertarian interpretation of classical liberalism – in which thick Lockean property rights and economic freedoms are supplemented by a strong but limited welfare state – leaves the relationship to the current welfare state inherently ambivalent. It can both *defend* and *challenge* it. I believe the consequentialist arguments for reforming the welfare state towards libertarianism are strong. I share the attitude of Hayek that rediscovering, and defending, such market-oriented welfare state solutions can "rescue some of the more modest and legitimate aims [of social reformers] from the discredit which over-ambitious attempts may well bring to all actions of the welfare state." (CoL: 379)

The “doctrine of the limits” in the classical liberal canon represents an attempt to discover rational principles, universally binding of justice, with which to coordinate human action. It represents the necessary (soft-)libertarian core of the ideal welfare-maximizing society, in which both *public* and *private* coercion are minimized. On top of this foundation, the limited welfare state can be justified as a Pareto-improvement, since it increases the opportunities of the poor and the unlucky to live a decent life, thus enabling the negative (neighbourhood) effects of private property to be compensated.

Thus, the provision of limited public goods, and the Basic Income Guarantee, are justified, *without* abandoning the Lockean foundations of liberalism. The third principle of liberalism complements the system, and actually buttresses the libertarian principles.

Libertarianism is the bastard “daughter” of classical liberalism. But a coherent classical liberal philosophy needs to supplement the libertarian principles with the third principle – the principle of limited welfare. The founders of classical liberalism thought so:

Locke's famous Proviso (TTG: §27) and Smith's arguments for public goods (WoN: 534) are just two examples. And Hayek, one of the most important modern day defenders of liberalism, has made the case that an “assurance of a certain minimum income for everyone, or a sort of floor below which nobody need fall even when he is unable to provide for himself, appears not only to be wholly legitimate protection against a risk common to all, but a necessary part of the Great Society” (Hayek, LLL: 55). Thus classical liberalism is innately concerned with combining liberty with (limited) welfare. This, I believe, follows from their consequentialist approaches.

More recently, Tomasi's bleeding-heart libertarianism has suggested that we should “advocate a system of economic liberty *because* that system advances the interests of all citizenry and most notably the interests of the poor.” (Tomasi: 141) This is simply a logical follow-up to the arguments of Locke, Smith and Hayek.

It is for this reason that the “messier” (Tomasi: 49) tradition of classical liberalism, with its emphasis on the positive role that government can play, especially in providing limited welfare, provides a better blueprint for a utopia that *everybody* can benefit from. And the hardcore libertarian focus on rights, derived from a skewed reading of Locke,



fails precisely because it claims that it doesn't have to justify the *usefulness* of property rights, although it was precisely their usefulness that animated Locke's original theory. No property can be justified without its beneficial effects to the society and the poor.

“As justice gives every man a title to the product of his honest industry [...] so charity gives every man a title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise”.

(Locke, TTG: 1, §42)

The public goods and welfare measures of the limited welfare state can correct against certain market failures and improve the overall utility of the society. But while the limited welfare state can improve overall utility, it must also stay within its limits: “To the extent that collective action is allowed to break beyond the boundaries imposed by the mutuality of gains from exchange, both direct and indirect, the community has taken a major step backward into the anarchistic jungle.” (Buchanan 1975: 50)

There will always be desires of individuals that cannot be satisfied by such a limited arrangement; some people will, no doubt, feel cheated, or let down, by the collective institutions. Public institutions can be so designed as to minimize harm caused by the “creative destruction” of the free market. But the progress of civilization depends on the fact that individuals should be stripped of the power of coercing their fellow men. The aims of the welfare state should be limited, general, institutional and long-term.

There remain, of course, innumerable unsettled questions about the precise contours of the just limits of state power. There might be need to extend state power further. New understanding of market failures, neighbourhood effects and environmental degradation might entail the expansion of the traditional powers of government. But this need not lead us to abandon the principle that free and equal individuals, left to pursue their own interests, supported by an impartial framework of law, protected against interferences by their fellow men, are the best hope for a prosperous, pluralistic and progressive society. To safeguard the freedom of individuals, we should *always* be weary of extending government power beyond the limits established by the Three Principles of liberalism - even in the name of a good cause. *Especially* in the name of a good cause.

We need to rediscover classical liberalism, even while reinterpreting it, and questioning its foundations, as a fruitful doctrine for 21<sup>st</sup> Century political philosophy. To that end, the classical liberal “doctrine of limits” - consisting of freedom from private *and* public coercion – needs to be implemented firmly into the legal and political structure.

The only way to make lasting advances in eliminating the ills of society – poverty, misery and ignorance – is to protect the domain of liberty. This can only be done by putting limits to coercive actions. No welfare (state) can last without a strong private sphere and a limited government. We need to keep in mind that a government without limits, no matter how noble its aims, is a government without hope.

“[A] wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement” (Thomas Jefferson 1801, 1<sup>st</sup> Inaugural Address)

The consequentialist defence of the Three Principles demands that the “industry and improvement” produced under the “system of natural liberty” (WoN: 533) are allowed to continue to improve the living conditions of the vast majority of the population.

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